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27 EMEA Ltd., and Siebel Systems, Inc.

28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

29 ORACLE USA, INC., a Colorado corporation,
30 ORACLE INTERNATIONAL CORPORATION,
31 a California corporation, ORACLE EMEA
32 LIMITED, an Irish private limited company, and
33 SIEBEL SYSTEMS INC., a Delaware
34 corporation,

35 Plaintiffs,
36 v.

37 SAP AG, a German corporation, SAP
38 AMERICA, INC., a Delaware corporation,
39 TOMORROWNOW, INC., a Texas corporation,
40 and DOES 1-50, inclusive,

41 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**FOURTH AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF FOR:**

- (1) COPYRIGHT INFRINGEMENT;
(2) VIOLATIONS OF THE
COMPUTER FRAUD AND ABUSE
ACT;
(3) VIOLATIONS OF THE
COMPUTER DATA ACCESS AND
FRAUD ACT;
(4) BREACH OF CONTRACT;
(5) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;**

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**(6) NEGLIGENCE INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;
(7) UNFAIR COMPETITION;
(8) TRESPASS TO CHATTELS;
(9) UNJUST ENRICHMENT /
RESTITUTION; and,
(10) AN ACCOUNTING.**

DEMAND FOR JURY TRIAL

Plaintiffs Oracle USA, Inc. (“Oracle USA”), Oracle International Corporation (“OIC”), Oracle EMEA Limited (“OEMEA”), and Siebel Systems Inc. (“SSI”) (together “Oracle” or “Plaintiffs”) for their Complaint against Defendants SAP AG (“SAP AG”), SAP America, Inc. (“SAP America”), TomorrowNow, Inc. (“TomorrowNow” or “SAP TN”), and Does 1 through 50 (collectively referred to as “SAP” or “Defendants”), allege as follows based on their personal knowledge as for themselves, and on information and belief as to the acts of others:

I. INTRODUCTION

1. This case is about a conspiracy, led by German software conglomerate SAP AG, to engage in and cover-up corporate theft of Oracle intellectual property on the grandest scale.

2. In mid-December 2004, in response to Oracle’s impending acquisition of PeopleSoft, SAP AG CEO Henning Kagermann and the SAP AG executive board of directors “decided to take a strong look at the possibility of offering PSFT support/maintenance services from SAP starting early 2005.” Board member Shai Agassi immediately instructed SAP AG’s James Mackey to investigate an acquisition of “the leader in this 3rd party support services, a company call[ed] TomorrowNow.” Agassi explained: “the idea is to take away the maintenance revenue stream away from ORCL.”

3. The SAP AG board knew it had just days to develop this new service in order to “disrupt the market.” Agassi told his team: “Remember the PR value of buying [TomorrowNow] . . .The bragging rights for having more PSFT customers under service than

1 Oracle may be all we need for a momentum swing . . .”

2 4. By January 7, 2005, SAP AG executive board members Kagermann,
 3 Agassi, Werner Brandt, and Gerd Oswald received a highly confidential document: the
 4 “business case” for SAP AG’s purchase of TomorrowNow. The document represented SAP
 5 AG’s negotiations, research and conclusions over the course of the previous three weeks.

6 5. The presentation made clear that TomorrowNow did not operate legally.

7 It detailed how TomorrowNow relied on “non-production” copies of PeopleSoft software for its
 8 “access to PeopleSoft system.” Under the heading “Threats,” the board was warned that “Access
 9 rights to the PeopleSoft software is very likely to be challenged by Oracle and past operating
 10 issues [of TomorrowNow] may be a serious liability if Oracle challenges (i.e., offsite production
 11 copies and the form of delivery of regulatory updates may be subject to Oracle challenge.)” As a
 12 result, the presentation predicted “likely legal action” from Oracle.

13 6. SAP AG’s board ignored these warnings and embraced TomorrowNow’s
 14 illegal business model for two reasons.

15 7. First, it decided it could not walk away from the “Opportunity” identified
 16 by the January 7 presentation to “distract” Oracle and take the PeopleSoft/JDE customer
 17 maintenance revenue and future applications sales Oracle expected to achieve with the
 18 PeopleSoft deal.¹

19 8. Second, it wrongly predicted Oracle would not sue. The presentation
 20 predicted “Oracle’s legal challenges to TomorrowNow’s ability to provide derivative
 21 works/support will require Oracle to also sue its customers – a difficult situation for Oracle.”

22 9. If Oracle did sue, SAP AG’s board developed a plan to attempt to insulate

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24 ¹ “PS,” “PSFT” or “PeopleSoft” refers either to PeopleSoft, Inc. acquired by Oracle in
 25 January 2005, or to PeopleSoft-branded enterprise software applications, whether offered by
 PeopleSoft or Oracle. “JDE” or “J.D. Edwards” refers either to J.D. Edwards & Co., acquired by
 26 PeopleSoft, Inc. in 2003, or to J.D. Edwards-branded enterprise software applications, whether
 offered by J.D. Edwards, PeopleSoft or Oracle. “SEBL” or “Siebel” refers either to Siebel
 27 Systems, Inc., acquired by Oracle in September 2005, or to Siebel-branded enterprise software
 applications, whether offered by Siebel or Oracle.

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1 SAP AG from the liability it knew TomorrowNow's service model represented. It would blame
 2 its customers for signing TomorrowNow's contracts, and leave the TomorrowNow "corporation
 3 in existence as a liability shield for any potential claims."

4 10. With this self-serving plan in place, SAP AG and SAP America bought
 5 TomorrowNow and converted it to SAP TN just two weeks later, days after Oracle closed on the
 6 deal with PeopleSoft. SAP AG did so knowing, at the SAP AG executive board level, that SAP
 7 TN's business model depended on routine, daily cross-use of misappropriated Oracle software
 8 applications and downloaded support products. Moreover, going forward, SAP AG knew that
 9 the SAP TN services it exploited to convert Oracle customers relied on SAP TN's tainted
 10 development activity to create illegal "SAP TN" software support products.

11 11. Following the SAP TN acquisition, rather than change the illegal SAP TN
 12 business model, SAP instead conspired to leverage the stolen Oracle intellectual property to
 13 entice customers to migrate to SAP software applications through SAP's "Safe Passage"
 14 program. SAP further conspired – at the highest levels of all three companies – to cover up the
 15 fundamental illegality of that program. In confidential internal presentations, with instructions to
 16 "PLEASE DELETE AFTER READING," SAP dubbed this conspiracy "Project Blue." Versions
 17 of these "Project Blue" presentations, which acknowledged the illegal nature of SAP TN's
 18 business, were prepared for the SAP AG executive board of directors as early as June 2005.

19 12. For years, SAP AG profited from SAP TN's illegal business model,
 20 without breathing a word about it to Oracle, SAP AG's existing and prospective customers, or
 21 the investing public. SAP AG and SAP America did not change SAP TN's corrupt business
 22 model because they considered SAP TN a crucial element in their plan to undermine Oracle's
 23 customer base and brand and to build their own customer base and brand at Oracle's expense.

24 13. Defendants' theft of Oracle software continued for several years – and
 25 even well after Oracle filed this action. By mid-2007, several months after Oracle brought this
 26 lawsuit, SAP finally could have decided to do the right thing by discontinuing any activity based
 27 on the pirated Oracle software. SAP was (and has always been) in total control of SAP TN, and
 28 so could have immediately changed SAP TN's business practices. Instead, having re-confirmed

1 in internal interviews that SAP TN relied on cross-use of copies of customer software as “part of
 2 their business model for supporting clients,” SAP executives made a conscious decision to
 3 continue business as usual at SAP TN – making and using the illegal local copies of their
 4 customers’ software to support multiple other customers. This deliberately-infringing activity,
 5 condoned by SAP executives, continued *for one and one-half years after Oracle filed its initial*
 6 *Complaint* not because SAP TN executives considered the SAP TN business model “ethical”
 7 (SAP AG’s new CEO admitted in October 2008 it was not), but instead for three purely selfish
 8 business reasons: (1) to preserve the asset value of SAP TN for an eventual sale to recoup the
 9 money SAP paid for it; (2) to sell more SAP software to and continue to receive support revenue
 10 from the customers who would continue to receive SAP TN’s illegal service and support; and (3)
 11 to maintain its self-reported high reputation for customer service and customer support. By
 12 continuing to run SAP TN’s corrupt business model after Oracle filed this lawsuit until October
 13 2008, SAP continued to authorize and direct vast additional instances of infringement – all to
 14 artificially inflate its own revenues and reputation at Oracle’s expense.

15 * * * *

16 14. Oracle – a leading developer of database and applications software –
 17 initially brought this lawsuit after discovering that SAP had engaged in systematic, illegal access
 18 to, and taking from Oracle’s computerized customer support systems.

19 15. Oracle amended its claims because discovery in this case has revealed that
 20 the focus of its original claims – SAP’s massive illegal downloading of Software and Support
 21 Materials from Oracle’s password-protected computer systems – is just one element of a larger
 22 scheme by SAP to steal and misuse Oracle’s intellectual property. In addition to the illegal
 23 downloads, SAP – with the knowledge of members of the SAP AG executive board of directors
 24 – made thousands of copies of Oracle’s underlying software applications on its computer
 25 systems. SAP warehoused Oracle’s code in “generic software environments” that it used to
 26 service SAP’s customers, train employees, create fake “SAP” branded fixes for distribution, and
 27 generally to support a business model that was illegal to its core. Oracle now amends the
 28 Complaint again following further discovery showing that SAP’s infringement and other

1 unlawful conduct extended in full to Oracle's Siebel software line as well. In addition, it now
 2 appears SAP also infringed Oracle's copyrighted database technology software.

3 16. As alleged in Oracle's prior Complaints, in the illicit downloading
 4 component of its scheme, SAP, through SAP TN, stole thousands of proprietary, copyrighted
 5 software products and other confidential materials that Oracle developed to service its own
 6 support customers.² SAP gained repeated and unauthorized access, in many cases by use of
 7 pretextual customer log-in credentials, to Oracle's proprietary, password-protected customer
 8 support websites. From these websites, SAP has copied and swept into its servers thousands of
 9 copyrighted Oracle Software and Support Materials. As a result, SAP compiled a massive illegal
 10 library of Oracle's copyrighted software code and other materials. This storehouse of stolen
 11 Oracle intellectual property is part of what enables SAP, through SAP TN, to offer cut rate
 12 support services to customers who use Oracle software, and to attempt to lure them to SAP's
 13 applications software platform and away from Oracle's.

14 17. Oracle's own records show at least 10,000 illegal downloads by SAP
 15 between September 2006 and February 2007. However, Oracle has now obtained SAP's internal
 16 records, which confirm that SAP has spent years systematically taking unauthorized support
 17 materials from Oracle's systems, most recently using a dedicated bank of twenty servers in a
 18 "download center" and a customized software tool called "Titan." SAP programmed Titan
 19 specifically to ignore any access or use restrictions for any particular customer log-in credential.
 20 Instead, SAP designed Titan to gain any form of access with any active log-in credential, and to
 21 "scrape" Oracle's websites for bug fixes, patches, updates and instruction manuals. At the time
 22 Oracle filed its prior Complaints, Titan and other tools had filled SAP storage vaults with more
 23 than *five terabytes* worth of Oracle's Software and Support Materials. On just one of SAP's
 24

25 2 These copyrighted materials, which include program updates, software updates, bug fixes,
 26 patches, custom solutions, instructional documents, knowledge management solutions, FAQs,
 27 Tech Notes and Alerts related to Oracle software products, including the PeopleSoft, JDE and
 Siebel families of software products, are referred to throughout as "Software and Support
 Materials."

1 servers, Oracle discovered nearly ***8 million*** downloaded Oracle Software and Support Materials.

2 18. For years, SAP dumped these materials into a co-mingled, master
 3 download library, and “exploded” the software support packages into their constituent objects to
 4 facilitate later indexing and searching by product. SAP accessed these master download libraries
 5 as needed when customers needed a fix – regardless of which log-in credential SAP had used to
 6 download a particular fix in the library, regardless of whether the customer getting the fix had
 7 any license to receive it, and regardless of whether the customer had a support contract with
 8 Oracle entitling them to receive that fix.

9 19. But these downloads of Software and Support Materials, though massive,
 10 were just one part of SAP TN’s fundamentally illegal business model:

- 11 • Beginning as early as 2002, SAP TN co-founders Andrew Nelson and Seth
 Ravin decided that SAP TN would expand its services and, in doing so, would
 create and keep on its computer systems illegal copies of Oracle’s ***underlying
 software applications***;
- 12 • Nelson and Raven directed SAP TN to warehouse dozens of these copies
 simply as “generic software environments” and use them as a “sandbox” to
 service other customers, train its employees, and create phony SAP TN-
 branded fixes to sell to its customers;
- 13 • In particular, SAP TN used these generic copies of Oracle software to
 “develop” (by copying Oracle software or creating illegal derivative works
 from it) SAP TN-branded “tax and regulatory updates,” and deliver them to its
 customers paying for SAP TN support of each Oracle software release;
- 14 • In at least hundreds of instances, in a process created by Nelson and Raven,
 SAP TN did this by first updating one “generic” environment with the Oracle-
 authored update code that SAP TN would download from Oracle’s systems
 with one customer’s log-in credential. SAP TN would then use software
 comparison tools to compare this “updated” generic software environment to a
 generic copy (also obtained from some unidentified customer) of an earlier

1 release of the same software. SAP TN then copied the differing code and
2 used it to “develop” (again, by creating an illegal derivative work) what it
3 called an SAP TN “retrofit update” in another “generic” environment. In the
4 course of this development process, SAP TN would normally make at least
5 four, and sometimes many more, generic copies of Oracle’s software
6 applications. In effect, there was no original development at all but merely
7 repeated, illegal copying and use of the Oracle software code;

- 8 • In at least hundreds of other instances, SAP TN simply used these generic
9 environments copied from customers’ Oracle software to develop and test
10 SAP TN “authored” (again, illegally created) updates that it delivered to its
11 customers. After it bought SAP TN, SAP AG directly assisted in this process
12 using its own software support resources;
- 13 • Many of SAP TN's environments, including generic environments, in turn ran
14 upon copies of Oracle's database software that were not licensed for
15 commercial or production use. After purchasing SAP TN, SAP AG and SAP
16 America refused to purchase Oracle database licenses for SAP TN use, even
17 though as an authorized Oracle database reseller, they knew full well the
18 permissible uses of database copies, and even though SAP TN described the
19 licenses as “urgently needed to support [SAP TN's] PeopleSoft customers
20 using this technology”;
- 21 • In total, SAP TN made thousands of copies of Oracle’s software, and
22 distributed thousands of individual fixes, for a fee, through its illegal “generic
23 retrofit” and “direct update” models;
- 24 • In addition to the code associated with these retrofit software updates, SAP
25 TN provided its customers with stolen Oracle instruction manuals, guides,
26 notes and other support documentation related to the updates. It did this by
27 “copying and pasting” downloaded Oracle documentation into re-branded
28 SAP TN documentation that was, according to the sworn testimony of SAP

1 TN's third employee, "essentially identical" and "virtually verbatim with
 2 small changes" as the Oracle documentation. SAP TN then distributed these
 3 copied documents to its customers with a cover letter signed by its CEO,
 4 Andrew Nelson; and,

- 5 • SAP TN prepared operations manuals to instruct SAP TN employees how to
 6 download Oracle documentation and alter it to conceal its origin and make it
 7 look like SAP TN's. These instructions mandated specific, but minor changes
 8 to Oracle materials, stating for example, "Go to Document Properties and
 9 change author to TomorrowNow," or "[w]here the [Oracle] document talks
 10 about the appendix, edit so that the TomorrowNow document says
 11 'summary.'"

12 20. The illegal downloads and the illegal software copies are part of an
 13 integrated, illegal business model. Without this stolen intellectual property, SAP TN could not
 14 operate. For example, whenever SAP TN wished to advertise support services for a new Oracle
 15 software product, it would need to first obtain a "seed" copy of the software. It needed this first
 16 copy so it could train its employees to support the software and create a generic software
 17 environment from which to "recycle" its support efforts and scale them across other customers.
 18 For these reasons, SAP TN's internal business plans specify that the first SAP TN customer on a
 19 new Oracle software release must contractually agree with SAP TN to provide copies of its
 20 Oracle software CDs to SAP TN.

21 21. SAP AG and SAP America have made repeated false statements about
 22 their own involvement in, and benefit from, SAP TN's theft.

23 22. While admitting that "inappropriate" downloads took place, in a July 3,
 24 2007 press conference, SAP AG CEO Henning Kagermann stated that a "firewall" existed
 25 between SAP AG and SAP TN that prevented SAP AG from having access to the Oracle
 26 software downloaded by SAP TN. That was not true:

- 27 • SAP AG and SAP America employees accessed SAP TN's systems
 28 through a special link on SAP TN's website;

- 1 • SAP TN employees accessed SAP AG and SAP America's systems
- 2 through "SAPnet," an internal network through which SAP AG provided
- 3 assistance to SAP TN's illegal development efforts;
- 4 • SAP TN, SAP America and SAP AG employees routinely emailed content
- 5 and intellectual property among themselves; and,
- 6 • At the time Oracle filed its lawsuit, SAP had before it a detailed roadmap
- 7 for connecting virtually every piece of the SAP TN network to the SAP
- 8 AG network.

9 23. These facts show that, despite Kagermann's public pronouncement, no
 10 "firewall" existed between SAP TN and SAP America or SAP AG. In fact, SAP TN did transmit
 11 copyrighted Oracle software code by email to SAP AG – a fact SAP AG has now admitted under
 12 oath.

13 24. Even worse, discovery in this case has revealed that SAP AG and SAP
 14 America knew from the start that SAP TN's business depended on this extensive illegal
 15 scheme – going far beyond SAP TN's downloading activity – to copy, keep, use and sell
 16 Oracle's software as its own. On December 21, 2004, one of the key members of SAP's due
 17 diligence team – a former PeopleSoft employee – reported directly to board member Agassi: "I
 18 am not sure how TomorrowNow gets access to Peoplesoft software, but its [sic] very likely that
 19 TomorrowNow is using the software outside the contractual use rights granted to them . . ." A
 20 week later, he reiterated the point: "The access rights to the PeopleSoft software is very likely to
 21 be challenged by Oracle."

22 25. Undeterred, SAP AG and SAP America initially sought assurances that
 23 SAP TN respected Oracle's intellectual property rights. SAP TN's owners flatly refused to give
 24 any such assurances. Instead, they warned that Oracle likely would sue SAP when it raised SAP
 25 TN's profile through the "Safe Passage" program.

26 26. SAP AG and SAP America bought SAP TN anyway in January 2005.

27 27. Immediately, because of apparent ongoing concerns about the propriety of
 28 keeping and using (and cross-using) thousands of copies of Oracle's software, SAP half-

1 heartedly considered and then tabled “Project Blue.” Project Blue was a codename for a secret
 2 project to begin to remove the infringing Oracle software from SAP TN computers and support
 3 customers remotely. “Blue” referred to supporting customers without locally hosting or using
 4 the infringing copies of Oracle software. “Yellow” referred to the status quo – keeping the
 5 illegal copies of Oracle software on SAP’s computers and using them for general purposes.

6 28. SAP TN prepared a series of secret “Project Blue” presentations for itself
 7 and members of the SAP AG executive board of directors. These presentations revealed that
 8 SAP TN’s business fundamentally depended on generic bootleg copies of Oracle’s software
 9 applications. Yet SAP still did nothing to stop the theft and instead took steps to expand it into
 10 other Oracle products:

- 11 • SAP continued to accept the benefits of SAP TN’s daily infringement of
 Oracle’s copyrights because, in the words of SAP TN’s founder Andrew
 Nelson, this “strategic investment” would allow SAP TN to “grow in
 profit while remaining a strategic weapon in SAP’s fight against Oracle”;
- 12 • SAP expanded SAP TN’s illegal model to include Oracle’s Siebel
 software just days after Oracle acquired Siebel, and added Oracle’s Retek
 and Hyperion software to its Safe Passage sales program immediately after
 those acquisitions as well; and,
- 13 • In March 2007, SAP AG’s executive board was about to approve, or had
 already approved, the expansion of SAP TN’s service offering to Oracle
 eBusiness Suite customers. A presentation to executive board member
 Gerd Oswald stated this expansion would “support SAP’s strategy and
 Board area strategy” and “leverage service as [a] competitive weapon in
 order to restrict competition.”

14 29. According to its business model, SAP TN could not have offered Siebel or
 15 eBusiness Suite support services, or considered offering Retek and Hyperion support services,
 16 without first obtaining illegal “sandbox” copies of that software for testing, research and
 17 development. In authorizing SAP TN to consider and, in the case of Siebel, actually offer these

1 services, SAP AG's executive board of directors had no reason to believe that SAP TN would
 2 not likewise engage in illegal acquisition and use of Oracle's software.

3 30. Through all of 2006, and into 2007 (and, discovery has revealed, also into
 4 2008 for over a year after Oracle brought this lawsuit), SAP AG did not require SAP TN to
 5 remove the illegal Oracle software copies from its systems by implementing Project Blue.
 6 Rather, SAP AG and SAP America instead allowed SAP TN to expand its offerings to these
 7 other Oracle software applications, and to bring in new so-called "Safe Passage" customers who
 8 would migrate from Oracle to SAP applications. SAP AG and SAP America provided leads,
 9 helped with and participated in negotiations whenever fruitful, and ran joint marketing
 10 campaigns, including a "Zero Dollar" campaign where a customer could "Get [its]
 11 PS/JDE/SEBL support [from SAP TN] at NO COST while you migrate to SAP [AG]" to "ensure
 12 we move these customer[s] off Oracle completely."

13 31. Confidential internal SAP communications reveal that SAP may not have
 14 won nearly as many customers through its Safe Passage program if it did not have the help of
 15 SAP TN's illegal service offering. For example, in May 2006 during SAP's negotiations with
 16 potential customer National Foods Limited, "TomorrowNow was able to give 'substantial teeth'
 17 to the SAP license bid, with the offer of combining both JDE and PeopleSoft support and
 18 maintenance services for the foreseeable future, whilst they work on the SAP implementation
 19 plans." Many other examples of SAP TN's efforts to win customers for SAP can be found
 20 throughout SAP's and SAP TN's records.

21 32. By early 2007, Project Blue had gone nowhere. SAP TN objected to
 22 giving up the infringing local software copies and engaged in self-described "delay tactics."
 23 SAP AG and SAP America refused to give up the software sales SAP TN's illegal activities
 24 helped them make. According to confidential notes from a call with Thomas Ziemen of SAP
 25 AG, Andrew Nelson confesses: "Project Blue - Taking much longer than expected. Don't feel
 26 we can get payroll development in external environments. Focus on new non-payroll
 27 environments. *Will provide formal proposal to you [Ziemen] to present to board for review.*"
 28 (emphasis supplied)

1 33. In sum, SAP’s “illegal library” of downloaded Oracle Software and
 2 Support Materials described in Oracle’s original Complaint is just the beginning. Pursuant to
 3 approved corporate protocols, with the knowledge and complicity of members of the SAP AG
 4 board of directors, SAP TN has spent years compiling and improperly using Oracle’s software
 5 applications and downloaded Software and Support Materials. Despite this knowledge, SAP AG
 6 board members have still chosen to assist and enable SAP TN’s illegal activities, and to boast on
 7 earnings calls about Safe Passage customer wins obtained with SAP TN’s assistance. SAP
 8 conspired to conceal SAP TN’s corrupt business model from Oracle, its customers and the
 9 investing public, so that it could continue to pocket the money from these unlawful sales. As
 10 explained in further detail below, this theft and cover-up appears to be an essential – and illegal –
 11 part of SAP’s competitive strategy against Oracle.

12 34. Oracle filed this action to bring the truth about SAP’s actions to light,
 13 force a return to fair competition, and redress the harm that SAP has caused by its illegal
 14 conduct. SAP’s infringement and other illegal, wrongful, and unfair business practices threaten
 15 to cause irreparable harm to Oracle, its many employees, customers and shareholders. Oracle
 16 has no adequate remedy at law for the harm threatened and caused by these acts.

17 **II. THE PARTIES**

18 35. Oracle USA is a Colorado corporation duly authorized to do business in
 19 the State of California, with its principal place of business in Redwood City, County of San
 20 Mateo, State of California. Oracle USA develops and licenses certain intellectual property,
 21 including copyrighted enterprise software programs, and provides related services. Oracle USA
 22 is the successor to PeopleSoft USA, Inc. (“PeopleSoft”) and a successor in interest to certain
 23 PeopleSoft, J.D. Edwards, and Siebel entities.

24 36. OIC is a California corporation duly authorized to do business in the State
 25 of California, with its only place of business in Redwood City, County of San Mateo, State of
 26 California. OIC owns and licenses certain intellectual property, including copyrighted enterprise
 27 software programs used around the world. Intellectual property rights formerly held by certain
 28 PeopleSoft, J.D. Edwards, and Siebel entities were transferred to OIC as part of the acquisitions

1 of PeopleSoft and Siebel by Oracle. OIC is the owner of the copyrights at issue in this action.

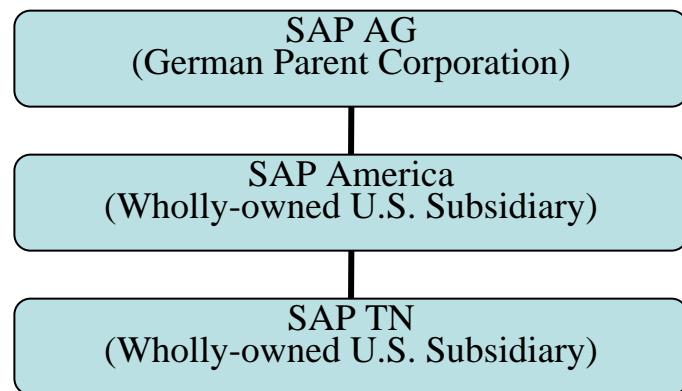
2 37. OEMEA is an Irish private limited company with its principal place of
 3 business in Dublin, Ireland. Directly and through its subsidiaries, OEMEA licenses certain
 4 intellectual property, including copyrighted enterprise applications software programs used
 5 around the world, and provides related services. OEMEA is a successor in interest to certain
 6 PeopleSoft and J.D. Edwards entities.

7 38. SSI is a Delaware corporation duly authorized to do business in the State
 8 of California, with its principal place of business in Redwood City, County of San Mateo, State
 9 of California. SSI developed, owned, and licensed certain intellectual property, including
 10 copyrighted enterprise software programs.

11 39. SAP AG is a German corporation with its principal place of business in
 12 Walldorf, Germany.

13 40. SAP America is a Delaware corporation with its principal place of
 14 business in Newtown Square, Pennsylvania. SAP America is a wholly-owned subsidiary of SAP
 15 AG.

16 41. SAP TN is a Texas corporation with its principal place of business in
 17 Bryan, Texas. SAP TN is a wholly-owned subsidiary of SAP America. The corporate
 18 relationship of the three named defendants is set forth in the chart below.



27 42. Oracle is currently unaware of the true names and capacities of Does 1
 28 through 50, inclusive, whether individual, partnership, corporation, unincorporated association,

1 or otherwise, and therefore sues these defendants by such fictitious names. Due to the
 2 surreptitious nature of Defendants' actions, and the complicated nature of their scheme, the
 3 identities of the Doe Defendants have been concealed from Oracle, preventing Oracle from
 4 identifying these Defendants by name. After discovery, which is necessary to ascertain the true
 5 names and capacities of these Defendants, Oracle will amend its complaint to allege the
 6 necessary identifying details.

7 43. Defendants all are doing business in and/or have directed their activities at
 8 California, and specifically this judicial district. By way of example only, SAP America and
 9 SAP TN advertise, promote, sell, license, service, and support customers in California and in this
 10 judicial district. SAP AG negotiates and enters into software license and support agreements
 11 directly within the United States and, specifically in this judicial district, negotiates certain
 12 software-related contracts directly with Oracle that contain provisions by which SAP AG
 13 consents to the jurisdiction of California courts and the application of California law. SAP AG
 14 also holds an annual meeting of its Board of Directors in Palo Alto, California, and finances the
 15 sales and promotional activities of both SAP America and SAP TN throughout the United States
 16 and in California.

17 44. At all material times, through its 100% ownership of both SAP America
 18 and SAP TN, SAP AG had both the right and the authority to control the actions of both
 19 corporations. Similarly, at all material times, through its 100% ownership of SAP TN, SAP
 20 America had both the right and authority to control the actions of SAP TN.

21 45. At all material times, each of the Defendants, including Does 1 through
 22 50, was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent,
 23 affiliate, alter ego, or co-conspirator of the others, had full knowledge of and gave substantial
 24 assistance to the alleged activities, and in doing the things alleged, each was acting within the
 25 scope of such agency, service, employment, partnership, joint venture, representation, affiliation,
 26 or conspiracy, and each is legally responsible for the acts and omissions of the others.

27 **III. JURISDICTION**

28 46. Oracle's first cause of action arises under the Federal Copyright Act, 17

1 U.S.C. §§ 101 *et seq.*, and its second cause of action arises under the Computer Fraud and Abuse
 2 Act, 18 U.S.C. §§ 1030 *et seq.* Accordingly, this Court has subject-matter jurisdiction over this
 3 action pursuant to 18 U.S.C. § 1030(g), 28 U.S.C. § 1331, and 28 U.S.C. § 1338.

4 47. This Court has supplemental subject matter jurisdiction over the pendent
 5 state law claims and parties under 28 U.S.C. § 1367, because these claims are so related to
 6 Oracle's claims under federal law that they form part of the same case or controversy and derive
 7 from a common nucleus of operative facts.

8 **IV. VENUE**

9 48. Venue in this district is appropriate, pursuant to 28 U.S.C. § 1391, because
 10 a substantial part of the events giving rise to the dispute occurred in this district, a substantial
 11 part of the property that is the subject of the action is situated in this district, and the Court has
 12 personal jurisdiction over each of the parties as alleged throughout this Complaint.

13 **V. INTRADISTRICT ASSIGNMENT**

14 49. Assignment is proper in this division under Civil L.R. 3-2 (c) and (d),
 15 because a substantial part of the events giving rise to the claims occurred in San Mateo County
 16 and a substantial part of the property that is the subject of the action is situated in San Mateo
 17 County.

18 **VI. FACTUAL ALLEGATIONS**

19 **A. Oracle's Software And Support Materials**

20 50. Oracle is the world's largest enterprise software company, and the first to
 21 receive J.D. Power & Associates' global certification for outstanding service and support based
 22 on measuring customer satisfaction worldwide. Oracle develops, manufactures, markets,
 23 distributes, and services software designed to help its customers manage and grow their business
 24 operations. Oracle's software offerings include database, middleware, and applications software
 25 programs.

26 51. As is typical in the enterprise software industry, Oracle does not sell
 27 ownership rights to its software or related support products to its customers. Instead, Oracle's
 28 customers purchase licenses that grant them limited rights to use specific Oracle software

1 programs with Oracle retaining all copyright and other intellectual property rights in these works.
 2 In addition, licensed customers can, and typically do, purchase some set of technical support
 3 services that include the right to obtain upgraded products such as updates, bug fixes, or patches
 4 to those software programs the customers have expressly licensed from Oracle and have the right
 5 to use for purposes authorized by Oracle.

6 52. Oracle's license agreements with its customers may vary according to the
 7 products licensed, including because the customers originally contracted with PeopleSoft, JDE,
 8 and/or Siebel, but all of the relevant license agreements for what is now Oracle software set
 9 comparable rules for access to, and use of, that software. Among other things, those rules
 10 prohibit access to, or use of, any portion of the software not expressly licensed to and paid for by
 11 the licensee, and any sublicense, disclosure, use, rent, or lease of the software to third parties.

12 53. Oracle's license agreements define Oracle's confidential information to
 13 include, without limitation, Oracle's software, its object and source code, and any associated
 14 documentation or service offerings. Licensees may designate third parties to help maintain
 15 Oracle's software, but only subject to the terms of the relevant license agreement between the
 16 licensee and Oracle. Those agreements generally preclude the third party from installing the
 17 software on a server, or accessing the source code of the software. The License Agreements
 18 generally prohibit the licensee or any third party from using the software offsite without notice to
 19 Oracle, prohibit disclosure to third parties, and prohibit any use other than by the customer for
 20 production, backup, archival and in-house disaster recovery purposes. As defined in one
 21 illustrative license agreement, "software" specifically includes the update products made
 22 available to customers as part of the support contracts that customers purchased from Oracle.

23 54. Through its Terms of Use, Oracle also restricts access to the customer
 24 support websites used by Oracle customers and/or their authorized agents to access and
 25 download Oracle software, including for its JDE, PeopleSoft, and Siebel, Software and Support
 26 Materials licensed to Oracle customers. For example, the Terms of Use on Oracle's Customer
 27 Connection support website, which relates to Oracle's PeopleSoft and JDE software, stated:
 28

1 You agree that access to Customer Connection...will be granted
 2 only to your designated Oracle technical support contacts and that
 3 the Materials [on the support website] may be used solely in
 4 support of your authorized use of the Oracle Programs for which
 5 you hold a supported license from Oracle. Unless specifically
 6 provided in your licensing or distribution agreement with Oracle,
 7 the Materials may not be used to provide services for or to third
 8 parties and may not be shared with or accessed by third parties.
 9

10 55. The Terms of Use explicitly describe the confidential nature of the
 11 material on Customer Connection: “the information contained in the Materials [available through
 12 Customer Connection] is the confidential proprietary information of Oracle. ***You may not use,***
 13 ***disclose, reproduce, transmit, or otherwise copy in any form or by any means the information***
 14 ***contained in the Materials for any purpose***, other than to support your authorized use of the
 15 Oracle Programs for which you hold a supported license from Oracle, without the prior written
 16 permission of Oracle.” (emphasis supplied).

17 56. Access to the secured areas of Customer Connection is also governed by
 18 Special Terms of Use. By using the secured website, the user agrees to accept and comply with
 19 these Special Terms of Use. The Special Terms of Use provide that access is only permitted via
 20 the user’s “personal username and password” and that all materials on the secured website are
 21 confidential and proprietary. The Special Terms of Use clearly provide that: “Use of such
 22 CONFIDENTIAL and PROPRIETARY information and materials for any other purpose is
 23 strictly prohibited.”

24 57. Prior to downloading Software and Support Materials from Oracle’s
 25 support websites, a user must also specifically agree to additional terms of use and restrictions
 26 specified in Oracle’s Legal Download Agreement:

27 Your username and password are provided to you for your sole use
 28 in accessing this Server and are confidential information subject to
 29 your existing confidentiality agreement with Oracle / PeopleSoft /
 30 JDEdwards. If you do not have a confidentiality agreement in
 31 effect with Oracle / PeopleSoft / JDEdwards, you are hereby
 32 notified that your username and password are confidential
 33 information and may only be distributed to persons within your
 34 organization who have a legitimate business purpose for accessing
 35 the materials contained on this server in furtherance of your
 36 relationship with Oracle / PeopleSoft / JDEdwards.

1 58. The Legal Download Agreement also puts the user on notice as to the
 2 confidential, proprietary and copyrighted nature of the Software and Support Materials available
 3 for download:

4 Any software that is made available to download from this server
 5 ("Software") is the copyrighted work of Oracle / PeopleSoft /
 6 JDEdwards and/or its affiliates or suppliers. All Software is
 7 confidential information of Oracle / PeopleSoft / JDEdwards and
 8 its use and distribution is governed by the terms of the software
 9 license agreement that is in effect between you and Oracle /
 10 PeopleSoft / JDEdwards ("License Agreement"). The Software is
 11 part of the Licensed Products under the License Agreement and
 12 may only be downloaded if a valid License Agreement is in place
 13 between you and Oracle / PeopleSoft / JDEdwards. The Software
 14 is made available for downloading solely for use by licensed end
 15 users according to the License Agreement and any reproduction or
 16 redistribution of the Software not in accordance with the License
 17 Agreement is expressly prohibited. WITHOUT LIMITING THE
 18 FOREGOING, COPYING OR REPRODUCTION OF THE
 19 SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR
 20 FURTHER REPRODUCTION OR REDISTRIBUTION IS
 21 EXPRESSLY PROHIBITED.

22 59. The Legal Download Agreement further restricts use of documents
 23 downloaded from the website:

24 Permission to use Documents (such as white papers, press releases,
 25 product or upgrade announcements, software action requests,
 26 datasheets and FAQs) from this server ("Server") is granted,
 27 provided that (1) the below copyright notice appears in all copies
 28 and that both the copyright notice and this permission notice
 29 appear, (2) use of such Documents from this Server is for
 30 informational and non-commercial or personal use only and will
 31 not be copied or posted on any network computer or broadcast in
 32 any media, and (3) no modifications of any Documents are made.
 33 Use for any other purpose is expressly prohibited.

34 60. In addition, users accessing specific materials, such as a Software
 35 Application Request ("SAR") through the SAR Search Web Application, agree to additional
 36 legal restrictions. These terms notify the user that the software available to download from
 37 Oracle is Oracle's copyrighted material. The terms further provide that the "software is part of
 38 the Licensed Products under the License Agreement" and "is made available for downloading
 39 solely for use by licensed end users according to the License Agreement. Any reproduction or
 40 redistribution of the Software not in accordance with the License Agreement is expressly

1 prohibited.” To download a SAR, the user must click on a button indicating that it accepts these
 2 terms.

3 61. Similarly, Oracle’s password protected SupportWeb website had separate
 4 Terms of Use governing access to, downloading of, copying of and further use or distribution of
 5 Siebel-related support materials. Those Terms of Use stated: “By using the Site, you agree to
 6 follow and be bound by the following terms and conditions concerning your use of the Site
 7 (“Terms of Use”)....” As with the PeopleSoft and JDE Terms of Use, these Siebel Terms of Use
 8 prohibited users from downloading, copying, viewing or printing the materials made available on
 9 that website other than “solely for personal, informational, non-commercial purposes” and also
 10 prohibited the user from modifying or altering those materials “in any way.” The Siebel Terms
 11 of Use further provided that “Except where your use constitutes ‘fair use’ under copyright law,
 12 you may not otherwise use, download, upload, copy print, display, perform, reproduce, publish,
 13 license, post, transmit or distribute any information from this Web site in whole or in part
 14 without the express authorization of Oracle.” The Siebel Terms of Use further stated: “Any use
 15 of software and accompanying documentation you download from the Site is subject to the terms
 16 of a software license agreement between you and Oracle. You must read the license agreement
 17 and indicate your agreement to its terms prior to installing or using the software.”

18 **B. Oracle Threatens To Unseat SAP**

19 62. On January 7, 2005, Oracle completed its acquisition of PeopleSoft to
 20 emerge as the second-largest provider of business software applications in the world and the first
 21 to rival SAP AG in market share, size, and geographic and product scope. As SAP America’s
 22 Vice President of Operations, Richard Knowles, testified on June 23, 2004 at the trial on the
 23 Department of Justice’s unsuccessful effort to block Oracle’s acquisition of PeopleSoft, the
 24 combination stood to revitalize Oracle overnight as a competitor in the business software
 25 applications business. SAP AG suddenly found itself in a far different competitive environment
 26 than the one in which it had grown comfortable. As SAP AG reeled, events unfolded at a rapid
 27 pace: eleven days after its announcement, Oracle launched the newly-united company and
 28 unveiled, at its headquarters with more than 48,000 people joining by Webcast and phone, how

1 the nearly 50,000-strong combined workforce of Oracle and PeopleSoft would provide
 2 unparalleled innovation and support to 23,000 business applications software customers
 3 throughout the world.

4 63. SAP AG's and SAP America's top executives publicly downplayed the
 5 threat that a combined Oracle and PeopleSoft entity would pose to its competitive position for
 6 business software applications. SAP AG CEO Henning Kagermann claimed that even with
 7 PeopleSoft, Oracle would "not [be] a competitor which could really hurt us." After the merger,
 8 he even claimed to wish Oracle "good luck" in competing with SAP AG.

9 64. But SAP AG had no answer for the business proposition the new Oracle
 10 offered. Not only do many SAP AG customers use Oracle's superior database software
 11 programs, but now Oracle offered a deeper, broader product line of enterprise applications
 12 software programs to compete against SAP AG.

13 65. Rather than improve its own products and offerings, SAP AG instead
 14 considered how to undermine Oracle. One way was to hit at Oracle's customer base – and
 15 potentially increase its own – by acquiring and bankrolling a company that claimed the ability to
 16 compete with Oracle support and maintenance services on Oracle's own software products,
 17 despite not owning any of the software code for, or intellectual property rights to, these same
 18 products.

19 C. **SAP AG's Purchase Of SAP TN And Knowledge Of Its Illegal Business
 20 Activities**

21 66. In the world of enterprise software applications, revenue comes from three
 22 basic activities: (a) licenses of the underlying software applications; (b) consulting relating to
 23 the implementation and operation of the software; and, (c) support contracts to keep the software
 24 updated and upgraded.

25 67. In December 2004, SAP TN was a small software services company,
 26 headquartered in Bryan, Texas and founded by former PeopleSoft software engineers,
 27 developers, and support technicians. It claimed to compete with PeopleSoft, JDE, and later,
 28 Oracle, by providing low-cost maintenance and support services to PeopleSoft and JDE (and

1 later Siebel) customers running assorted versions of these software programs. SAP TN claimed
 2 that it could cut customer maintenance and support bills in half and give customers a reprieve
 3 from software upgrade cycles by allowing customers to remain on older, often outdated, versions
 4 of PeopleSoft, JDE, or Siebel software rather than moving to later versions by implementing
 5 upgrades that the customers would receive by paying for support services from the software
 6 vendors themselves. As one industry journalist explained, SAP TN promised to offer such cheap
 7 support “because it is not investing millions of dollars in research and development for future
 8 versions of the software; it instead focuses on simply keeping the software up and running for an
 9 annual fee.”

10 68. As described in a glossy spread in a leading industry publication, in
 11 December 2004, just weeks before Oracle would close the PeopleSoft acquisition, SAP TN
 12 president Andrew Nelson got “the magic phone call” from Jim Mackey, the “front man for SAP
 13 AG’s mergers and acquisitions strategy.” Mackey made Nelson an offer “he couldn’t refuse.”

14 69. To retain full control over every detail of its scheme to lure away
 15 customers from Oracle, and to use SAP TN to do it, SAP AG proposed to buy SAP TN outright
 16 and make it a wholly-owned – and wholly-beholden – subsidiary. Acquiring SAP TN was not a
 17 mere investment by SAP AG, but a calculated competitive move. As one industry observer put
 18 it, SAP AG bought “another arrow in its quiver to hunt after Oracle’s customers.” Aligning with
 19 SAP AG made little sense for SAP TN, however, because to the extent SAP AG successfully
 20 undermined Oracle by having its customers move from Oracle’s software to SAP AG’s software,
 21 SAP TN would eventually lose its customer base. So SAP AG had to make the price right – and
 22 accept a known risk.

23 70. The pre-deal negotiations with SAP TN reveal the breadth of SAP AG’s
 24 knowledge – and its lack of concern – about SAP TN’s thefts. Based on repeated warnings about
 25 how SAP TN’s business model likely relied on illegal use of Oracle software, SAP America and
 26 SAP AG asked for “a representation regarding the infringement of PeopleSoft’s intellectual
 27 property rights . . . that . . . would survive indefinitely . . . [and] would not be subject to any
 28 basket or cap on indemnity.”

1 71. But SAP TN's two shareholders, Seth Ravin and Andrew Nelson, refused
 2 to make any representation that SAP TN had respected PeopleSoft's (soon to be Oracle's)
 3 intellectual property rights. Instead, Ravin reminded SAP of "discussions that were had
 4 regarding the increased likelihood of SAP being the subject of a lawsuit as a result of the very
 5 public and very aggressive move to offer alternative support to Oracle/PeopleSoft clients." SAP
 6 TN insisted this exposure to legal action by Oracle "is a real risk that must be borne primarily by
 7 SAP as a business and strategic investment risk," and threatened to suspend due diligence
 8 activities on the deal.

9 72. In response, SAP AG's Jim Mackey emailed Ravin directly: "Do not let
 10 your attorneys shut down the process. Keep the negotiations and diligence going. Appropriate
 11 compromises will be reached." In the end, the "appropriate compromise" was that SAP TN
 12 offered no assurances whatsoever that it had respected Oracle's intellectual property rights, and
 13 instead gave an indemnity from Ravin and Nelson totaling \$2 million to cover costs relating to
 14 SAP TN's violations of Oracle's intellectual property. This indemnity term represented a
 15 spectacular twenty percent of the total \$10 million price SAP AG and SAP America paid for
 16 SAP TN. Thus, SAP AG and SAP America knew or had reason to know – before they even
 17 acquired SAP TN – that SAP TN's business model posed a huge potential infringement problem.

18 73. In barely a month, SAP TN agreed to the deal and cast its lot with SAP
 19 AG. In January 2005, through SAP America, SAP AG acquired SAP TN. In connection with
 20 the SAP TN acquisition, SAP America's CEO, Bill McDermott, crowed "There's nothing that I
 21 love more than to win." But win at what cost? SAP appears to have taken a short cut to equip
 22 itself to support Oracle's software programs at half Oracle's price. SAP stole much of the
 23 Software and Support Materials – and software itself – directly from Oracle. SAP AG and SAP
 24 America knew it – and ignored it – from the start.

25 **C. SAP's Safe Passage Scheme**

26 74. When Oracle acquired PeopleSoft, it increased its potency as a competitor
 27 to SAP for enterprise applications software and related services. Industry observers noted this
 28 fundamental shift in the competitive landscape. One industry analyst stated that, "Oracle Corp.

1 is developing a ‘super set’ of applications, combining features from the PeopleSoft and JDE
 2 software and its CEO Larry Ellison has been vocal about his intentions to take market share
 3 away from SAP. Oracle said it has thousands of developers building the new application suite,
 4 called Project Fusion, aimed at taking market share from No. 1 ranked SAP.” Another mused,
 5 “After the acquisition of PeopleSoft earlier this year, Oracle officially became a player on SAP’s
 6 turf.”

7 75. SAP AG’s hasty acquisition of SAP TN was widely perceived as a
 8 response to the new competitive threat from Oracle. SAP’s own statements confirmed it.

9 76. On January 19, 2005, SAP AG’s top executives unveiled SAP AG’s
 10 acquisition of SAP TN as the centerpiece of its new “Safe Passage” scheme. SAP AG’s CEO,
 11 Henning Kagermann, identified SAP TN as instrumental to the parent company’s “Safe Passage”
 12 program, publicly indicating that SAP TN was authorized and intended to implement SAP AG’s
 13 goals. SAP advertised its “Safe Passage” program as explicitly designed to transition customers
 14 away from Oracle products and onto the SAP software platform. SAP AG spokesman Bill Wohl
 15 vowed that SAP AG would use SAP TN to “keep the pressure on Oracle” by exploiting legacy
 16 PeopleSoft customers’ perceived unease about Oracle’s commitment to supporting legacy
 17 PeopleSoft software.

18 77. As reported in industry publications, SAP TN’s services “form[ed] the
 19 basis of [SAP AG’s] Safe Passage initiative, a program aimed at siphoning off valuable software
 20 maintenance revenue from Oracle and persuading Oracle customers to switch software products
 21 [to SAP].” The Senior Vice President and Chief Operating Officer of SAP Asia Pacific, Colin
 22 Sampson, admitted that the SAP TN acquisition was “an integral part” of SAP’s Safe Passage
 23 program, which in turn was part of SAP’s “ongoing strategy to compete with Oracle.” And SAP
 24 TN certainly knew its role was to achieve SAP AG’s and SAP America’s ends: as SAP TN’s
 25 CEO, Andrew Nelson, stated, “We’re owned by SAP. We want them to be successful.”

26 78. But although SAP America CEO, Bill McDermott, committed to throw “a
 27 lot of additional resources” behind SAP TN (which consisted of only 37 employees in total),
 28 SAP appeared to focus more on growing the SAP TN sales force rather than investing in or

1 expanding SAP TN's tiny development team. Indeed, SAP TN did not appear to have the
 2 development capability to meet the support commitments advertised in the "Safe Passage"
 3 brochures at any price, much less the 50% discount promoted by SAP. It certainly did not match
 4 Oracle's investment in development resources, or even come close to it. These facts raised
 5 questions about how SAP could offer the type of comprehensive technical support services on
 6 Oracle programs that customers of enterprise applications typically require.

7 79. Nevertheless, industry observers deemed the "Safe Passage" program
 8 "measurably more aggressive," and a sign that "SAP has taken the gloves off."

9 80. After the acquisition, SAP TN's new parent companies directed it to begin
 10 to implement a two-phase plan to serve as the centerpiece of the Safe Passage scheme and to
 11 increase SAP's enterprise application market share. First, to lure the support business over from
 12 Oracle, SAP would offer cut-rate pricing combined with the promise of essentially unlimited
 13 future support to former PeopleSoft and JDE support customers. Second, in connection with
 14 converting Oracle customers to SAP support (via SAP TN), SAP would aggressively campaign
 15 to migrate those customers to an SAP enterprise software platform. As SAP AG Managing
 16 Director Alan Sedghi admitted, SAP AG would try to use SAP TN as a means of "speeding-up"
 17 the migration of PeopleSoft and JDE users to SAP AG platforms.

18 81. The CEOs stated the proposition more bluntly. In April 2005, SAP
 19 America CEO Bill McDermott claimed, "The SAP Safe Passage offering gives companies an
 20 affordable way to protect their current investments, ease integration with SAP NetWeaver(TM)
 21 and begin the process of innovating their businesses today." A month later, at the SAP AG
 22 annual meeting, SAP AG CEO Henning Kagermann confirmed: "We worked with [SAP TN] to
 23 very quickly set up a comprehensive program for SAP customers running PeopleSoft and JD
 24 Edwards solutions."

25 82. SAP implemented Phase One immediately. As reflected on SAP AG's
 26 website: "SAP offers Safe Passage for PeopleSoft, JD Edwards, and Siebel customers – If
 27 Oracle's options have you worried, consider another option: SAP. SAP provides solutions,
 28 technology *and maintenance services.*" (emphasis supplied) SAP America's website promised

1 that “SAP and TomorrowNow can cut your maintenance costs by as much as 50% through
 2 2015,” and elsewhere says that “Safe Passage maintenance and support are delivered worldwide
 3 through TomorrowNow.” (emphasis supplied) SAP TN’s website confirmed its acceptance and
 4 undertaking of the SAP-controlled Safe Passage program: “TomorrowNow can also provide our
 5 support services as part of the SAP Safe Passage Program.”

6 83. Beginning in January 2005, SAP sales representatives unleashed a torrent
 7 of marketing materials designed to exacerbate and leverage perceived, albeit unfounded,
 8 PeopleSoft and JDE customer uncertainty about the prospects for long-term, quality support
 9 from Oracle. An April 2005 SAP AG press release apparently aimed to increase perceived doubt
 10 among Oracle customers by announcing a “second wave” of “Safe Passage.” To exploit the fear
 11 it intended to create, SAP AG’s “second wave” included “an intensive customer recruitment
 12 campaign, offering significantly lower cost maintenance alternatives to Oracle customers
 13 running PSFT/JDE solutions” through 70,000 direct mail solicitations to Oracle customers.
 14 These lower cost alternatives advertised by SAP AG were to come directly through SAP TN.

15 84. To implement Phase Two of its plan (luring Oracle customers to the SAP
 16 enterprise software platform), SAP AG did not simply sit back and leave the recruiting of
 17 potential Safe Passage customers to SAP TN’s sales force. Instead, it took a hands-on approach.
 18 It deployed its salespeople to contact potential customers and push them to switch to SAP TN’s
 19 services. If customers declined to convert to SAP TN, the SAP AG sales personnel would
 20 pressure the customers to drop Oracle products outright in favor of SAP AG’s suite. To give
 21 teeth to these commingled sales efforts, SAP AG offered maintenance support through SAP TN,
 22 officially “bundled” with SAP AG enterprise software as a centerpiece of the Safe Passage
 23 program.

24 85. SAP executives touted the Safe Passage program’s limited success in its
 25 first year. SAP AG’s CEO, Henning Kagermann, promised SAP AG would use SAP TN and the
 26 Safe Passage program to “fight for” more customers. By March 2006, SAP AG boasted in a
 27 press release that more than 200 customers had signed up for Safe Passage, the program it
 28 implemented partly through SAP TN, and which it claimed “offers companies SAP solutions,

1 technology, maintenance services, investment protection and a clear road map to the next
 2 generation of business software.”

3 86. However, as Oracle continued to take market share and expand its product
 4 offerings, including through its September 12, 2005 announcement that it would acquire Siebel
 5 Systems, SAP grew more desperate, and more aggressive. In October 2005, SAP announced it
 6 would extend its Safe Passage program to Siebel customers, including apparently instantaneous
 7 round the clock support from SAP TN – whose engineers at that time presumably had spent
 8 virtually no time to develop Siebel support software products. As reported on Forbes.com after
 9 Oracle’s announcement of its impending Siebel acquisition, “SAP AG plans to announce . . . that
 10 it will offer technical support for more of rival software maker Oracle Corp.’s own products [the
 11 Siebel products] for a far cheaper price.” SAP’s “cheaper price” (referred to elsewhere as “cut
 12 rate” support) continued at “50 cents on the dollar for maintenance fees,” but its services were
 13 expanded to support more Oracle product lines and a wider range of customers. SAP America
 14 CEO, Bill McDermott, confirmed that SAP intended to use the Siebel acquisition as another
 15 opportunity to lure Oracle customers to SAP stating that SAP is “not distracted by the challenges
 16 of integrating multiple code bases, companies and corporate cultures.” It appears that SAP only
 17 could offer instantaneous, round the clock Siebel code support, within a few weeks of Oracle’s
 18 acquisition announcement, because SAP TN surreptitiously had acquired, studied and developed
 19 a service model based on illegal copies of Siebel software. Based on its standard business
 20 model, it appears likely that SAP TN did the same thing with Oracle’s eBusiness Suite, Hyperion
 21 and Retek software.

22 87. All the while, SAP AG demanded reports detailing implementation of the
 23 Safe Passage program and other schemes against Oracle with code-names like “Turn Up The
 24 Heat” and the “Oracle Disruption Plan.” SAP AG apparently even gave away free support from
 25 SAP TN in efforts to steal Oracle’s applications software customers.

26 88. By July 2006, SAP AG CEO Henning Kagermann conceded that SAP had
 27 lost as much as 2% market share to Oracle. At the same time, curiously, SAP AG continued to
 28 tout the success of Safe Passage. In a July 2006 earnings call, Léo Apotheker, then SAP AG’s

1 President of Customer Solutions and Operations and currently SAP AG's co-CEO, boasted that
 2 Safe Passage "continues to do really well," including because SAP AG "extended the program in
 3 order to offer it as well to Siebel customers." By extending the Safe Passage program to Siebel
 4 customers, and in conjunction with opening new SAP TN offices around the world, Apotheker
 5 claimed that SAP now had "a global network of [SAP TN] capabilities" – enough to "gain[]
 6 significant traction." The Siebel offering was not the only way SAP AG "expanded" Safe
 7 Passage. Notably, it also encouraged the SAP AG and SAP America sales teams to work more
 8 closely with SAP TN to jointly sell SAP TN services and SAP AG software applications to
 9 current and prospective customers.

10 89. SAP's April 2007 Annual Report further confirms that SAP has used SAP
 11 TN as a tool to try to convert Oracle customers to SAP's software platform. As reflected on
 12 pages 187-190 of the Annual Report, SAP TN loses money in every region in which it operates.
 13 SAP has no business incentive to tolerate substantial operating losses in its subsidiary without
 14 SAP TN providing a significant off-setting benefit. Here, that takes the form of enhanced
 15 opportunities for SAP to sell its enterprise software applications to support customers attracted to
 16 SAP TN's discount pricing – which is made possible through the theft and use of Oracle's
 17 intellectual property.

18 **D. A Deal Too Good To Be True**

19 90. Although SAP put a brave face on its ability to compete with the
 20 increasingly potent Oracle applications offerings, some industry analysts wondered whether a
 21 small company like SAP TN, even after having expanded its ranks to 150 employees, could
 22 actually develop and offer the hundreds of regulatory updates, bug fixes, patches, and other
 23 labor-intensive support items that a customer would need to maintain useful, optimally
 24 functioning Oracle software, without infringing on Oracle's intellectual property. Oracle, by
 25 comparison, maintains a development force of more than 15,000 software and support engineers
 26 to create and help implement the code fixes, patches, and updates that comprise the advanced
 27 support services required by Oracle's licensed customers.

28 91. It was not clear how SAP TN could offer, as it did on its website and its

1 other materials, “customized ongoing tax and regulatory updates,” “fixes for serious issues,”
 2 “full upgrade script support,” and, most remarkably, “30-minute response time, 24x7x365” on
 3 software programs for which it had no intellectual property rights. To compound the puzzle,
 4 SAP continued to offer this comprehensive support to hundreds of customers at the “cut rate” of
 5 50 cents on the dollar, and purported to add full support for an entirely different product line –
 6 Siebel – with a wave of its hand. The economics, and the logic, simply did not add up.

7 92. Oracle has now solved this puzzle. To stave off the mounting competitive
 8 threat from Oracle and to do so without making the requisite investment, SAP unlawfully
 9 accessed, copied, and wrongfully used Oracle’s enterprise software applications and Software
 10 and Support Materials. It did so with the knowledge and consent of the SAP AG executive board
 11 of directors.

12 **E. SAP’s Theft By Downloading**

13 **1. SAP TN Compiles A Massive Download Library**

14 93. SAP TN’s use of its so-called Titan scraping tool resulted in such high
 15 levels of downloads that Oracle discovered its scheme. In late November 2006, there occurred
 16 unusually heavy download activity on Oracle’s password-protected customer support website for
 17 its PeopleSoft and J.D. Edwards product lines. That website permits licensed Oracle customers
 18 with active support agreements to download a wide array of Software and Support Materials.
 19 Oracle has invested billions of dollars in research, development, and engineering to create these
 20 materials. Customers who have contracted for support with Oracle have log-in credentials to
 21 access Customer Connection and download Software and Support Materials. However, Oracle’s
 22 support contracts limit customers’ access and download rights to Software and Support Materials
 23 pertaining to the customers’ licensed products. Customers have no contractual right to download
 24 Software and Support Materials relating to software programs they have not licensed from
 25 Oracle, or for which the customers did not purchase support rights.

26 94. The Software and Support Materials are a subset of the technical support
 27 services that Oracle makes available to its customers that have licensed Oracle software
 28 programs and purchased the right to receive technical support services related to them. The full

1 suite of technical support services (also known as “support” or “maintenance”) generally
 2 includes three types of offerings that Oracle, like most other enterprise software vendors, makes
 3 available to its licensed customers: (i) telephone or email access to Oracle’s support technicians
 4 regarding the operation of Oracle’s software; (ii) software program code for the customers’
 5 licensed software programs which adds new functionality or features to the software (generally
 6 referred to as “software updates”), or that addresses errors or “bugs” in the software program
 7 (generally referred to as “software patches”); and (iii) “knowledge management” articles that
 8 help with problem solving and provide suggestions relating to the customer’s use of licensed
 9 software programs. Because of the complexity of enterprise software applications and the
 10 business environments in which they run, regular software updates and patches and knowledge
 11 management articles are critical components of a software maker’s support offering.

12 95. To analyze and improve on its industry leading support services, Oracle
 13 asks each customer searching for a solution on Oracle’s Customer Connection website to click
 14 on a button after each search to indicate whether or not a particular search result helped solve the
 15 customer’s problem. If the customer selects the “No, continue search” option, the support
 16 system responds by offering the customer further options. Oracle regularly compiles this data to
 17 assess whether its system helped customers resolve their support issues, with the aim of
 18 continually improving the support system for customers.

19 96. In late 2006, Oracle noticed huge, unexplained spikes in the number of
 20 downloads from Customer Connection by one person, a user suspiciously named “TomNow.”
 21 Oracle also observed anomalies in the number of times customers on the online support website
 22 had clicked the “No, continue search” option. These clicks numbered in the thousands for
 23 several customers, and Oracle discovered that each response – each answer by users pretending
 24 to be the customer – occurred in a matter of seconds or less. Given the extreme speed at which
 25 the activity occurred, these clicks could not reflect real responses from any human customers
 26 actually reading the solutions they had accessed. Instead, these click patterns showed that the
 27 users had employed an automated process to move with lightning speed through the entire library
 28 of Software and Support Materials on the Customer Connection website. And, apparently, to

1 make a copy of them all.

2 97. Oracle embarked on a time-consuming and costly investigation to assess
 3 the damage done to its customer response database and fully understand the sources of the
 4 unauthorized downloads. In the course of this investigation, Oracle discovered a pattern.
 5 Frequently, in the month before a customer's Oracle support expired, a user purporting to be that
 6 customer, employing the customer's log-in credentials, would access Oracle's system and
 7 download large quantities of Software and Support Materials, including dozens, hundreds, or
 8 thousands of products beyond the scope of the specific customer's licensed products and
 9 permitted access. Some of these apparent customer users even downloaded materials after their
 10 contractual support rights had expired.

11 98. This systematic theft of Oracle's Software and Support Materials did not
 12 originate from any actual customer location. Rather, the access originated from an internet
 13 protocol (IP) address in Bryan, Texas, an SAP America branch office location and home of its
 14 wholly-owned subsidiary SAP TN. SAP TN is a company that purports to provide technical
 15 support services on certain versions of Oracle's PeopleSoft, JDE and Siebel software programs.
 16 The Bryan, Texas IP address used to access and download Oracle's Software and Support
 17 Materials is connected directly to SAP's computer network. Indeed, Oracle's server logs have
 18 recorded access through this same IP address by computers labeled with SAP TN identifiers
 19 using SAP TN IP addresses. When Oracle first noticed that the unlawful access and downloads
 20 originated almost exclusively from one IP address in Bryan, Texas, Oracle shut down access to
 21 that IP address. If the access and downloads had been legitimate, the customer or vendor would
 22 have called in right away to get its access reinstated. Instead, a new IP address, also linked to
 23 SAP TN, sprouted up almost immediately and the unlawful access and downloading resumed.

24 99. These SAP TN Bryan, Texas offices, housed the SAP "download center"
 25 with twenty or more "download servers" running the Titan program and other computer scripts
 26 virtually around the clock.

27 100. In many instances, including the ones described above, SAP TN
 28 employees used the log-in IDs of multiple customers, combined with phony user log-in

1 information, to gain access to Oracle's system under false pretexts. Employing these techniques,
 2 SAP TN users effectively swept much of the contents of Oracle's system onto SAP TN's servers.
 3 These "customer users" supplied user information (such as user name, email address, and phone
 4 number) that did not match the customer at all. In some cases, this user information did not
 5 match anything: it was fake. For example, some users logged in with the user names of "xx"
 6 "ss" "User" and "NULL." Others used phony email addresses like "test@testyomama.com" and
 7 fake phone numbers such as "7777777777" and "123 456 7897." In other cases, SAP TN
 8 blended log-in information from multiple customers with fake information. For example, one
 9 user name connected to an SAP TN IP address appears to have logged in using the credentials of
 10 *seven* different customers in a span of just 15 days – all from SAP TN computers in Bryan,
 11 Texas. **All of these customers whose IDs SAP TN appropriated had one critical fact in**
 12 **common: they were, or were just about to become, new customers of SAP TN – SAP AG's**
 13 **and SAP America's software support subsidiary whose sole purpose is to compete with**
 14 **Oracle.**

15 101. Although it is now clear that the customers initially identified by Oracle as
 16 engaged in the illegal downloads are SAP TN customers, those customers do not appear to have
 17 themselves directly engaged in the download activity; rather, the unlawful download activity
 18 observed by Oracle and described here originates directly from SAP's computer networks.
 19 Oracle's support servers have even received hits from URL addresses in the course of these
 20 unlawful downloads with SAP TN directly in the name (e.g. <http://hqitpc01.tomorrownow.com>).
 21 Indeed, for many of these downloads, Oracle noticed that SAP TN did not even bother to change
 22 the false user information from customer to customer when it logged in.

23 102. The wholesale nature of this unlawful access and downloading was
 24 extreme. SAP appears to have downloaded virtually *every* file, in *every* library that it could find.
 25 SAP's business model required it to continually refresh its collection of Oracle's Software and
 26 Support Materials. As Kathy Williams, Director of Support Services at SAP TN, said in an
 27 internal communication to her fellow managers, "How can we support a client that can never
 28 upgrade or have access to any fixes beyond what they have now? George [Lester] and I see this

1 as a very big risk to TomorrowNow?” To resolve this “risk,” and keep itself in business, SAP
 2 simply stole Oracle’s materials wholesale, and with no regard to whether it or its customers were
 3 licensed to the materials it downloaded. In some instances, SAP would not even bother to wait
 4 for negotiations with a prospective customer to conclude – it would use a prospective client’s
 5 credentials to download materials, then keep these “pre-deal” downloads to use with other
 6 customers even if the “prospect” never actually became an SAP customer. For example, in the
 7 case of Canada Lands Company (which never became an SAP customer), SAP TN admits, “they
 8 were a prospect and we kept the folder around since the beginning, the downloads were very
 9 incomplete and we would look for fixes here for customers like Praxair and Yazaki.” Further,
 10 discovery has revealed that SAP’s Siebel support services relied on the same massive, unlicensed
 11 downloading scheme.

12 **2. SAP TN’s Access Was Unauthorized**

13 103. SAP TN’s unauthorized access to, copying of, and use of Software and
 14 Support Materials from Oracle’s system, and its customers’ software releases, violated the terms
 15 of the Oracle customers’ License Agreements, the Oracle customer support websites’ Terms of
 16 Use, the Customer Connection Special Terms of Use, the Legal Download Agreement, and the
 17 SAR legal restrictions. These terms included agreements:

- 18 • Not to access or use any portion of the Software, including updates,
 not expressly licensed and paid for by the Licensee;
- 19 • Not to directly or indirectly, sublicense, relicense, distribute, disclose,
 use, rent, or lease the Software or Documentation, or any portion
 thereof, for third party use, or third party training;
- 20 • Not to access the customer support system if not the customer’s
 authorized and designated Oracle technical support contact;
- 21 • Not to use the Materials on the support website except in support of
 the customer’s authorized use of the Oracle Programs for which the
 customer holds a supported license from Oracle;
- 22 • That the customer username and password are for the customer’s sole

use in accessing this support server;

- That the customer username and password may only be distributed to or used by persons in the customer's organization who have a legitimate business purpose for accessing the materials contained on the support server in furtherance of the customer's relationship with Oracle; and,
 - That the Materials on the support website are confidential information subject to existing confidentiality agreements.

104. Oracle's Siebel-related license agreements contain similar terms and

10 restrictions. An illustrative Siebel license agreement kept by SAP TN in its files grants the

11 customer use of the software “solely for [the customer’s] own internal business operations.”

12 Furthermore, the software cannot be used “to train persons other than named Users.”

105. Oracle's Developer License contains similar terms and restrictions,

14 requiring that software licensed under the Developer License not be used for internal data

15 processing, for any commercial or production purposes, or for any purpose except the

16 development of an application prototype.

106. SAP has intimate familiarity with these important restrictions and

18 conditions relating to Oracle's Software and Support Materials. SAP AG and SAP America

19 specifically tasked former PeopleSoft employees with the job of investigating and reporting on

20 SAP TN's business model as part of the pre-acquisition due diligence. SAP TN's management,

21 and a significant number of its employees, formerly worked at PeopleSoft and JDE. Of SAP

22 TN's ten-member management team, six list prior employment experience with PeopleSoft.,

23 or Oracle, including: (1) Andrew Nelson, President and CEO; (2) Bob Geib, V.P. North

24 American Sales; (3) Laura Sweetman, V.P. Global J.D. Edwards Support; (4) Mel Gadd, V.P.

25 Quality; (5) Nigel Pullan, V.P. International Sales; and, (6) Shelley Nelson, V.P. Global

26 PeopleSoft Support. SAP TN later added John Tanner III, a former Siebel Director, to its

27 management team as the Global Vice President of Support Services. In addition, former

1 is reflected as the person performing many of the downloads at issue, appear to have applied
 2 their familiarity with Oracle's customer support websites to directly participate in and perfect the
 3 illegal downloading scheme. Consistent with this evidence, SAP TN's then Vice President,
 4 Nigel Pullan (who has since "resigned"), recently suggested that SAP intentionally targets
 5 Oracle's employees to extract their knowledge of Oracle's new products: "As new releases start
 6 to come out, the people that we hire, we make sure that they have skillsets in those new
 7 releases." SAP had copies of Oracle's license agreements and Terms of Use in its possession,
 8 including for Siebel. SAP TN admitted to discussing those terms and using them for example as
 9 reference materials. In short, SAP cannot credibly claim ignorance of Oracle's access rules.

10 107. Notwithstanding SAP's knowledge of Oracle's license agreements with its
 11 customers, the support website terms of use, and the confidential, proprietary, and copyrighted
 12 nature of Oracle's Software and Support Materials, Oracle learned that SAP TN accessed and
 13 downloaded the Software and Support Materials when it either had no legitimate basis to access
 14 Oracle's restricted website, or in a way that grossly violated the limited access rights it did have.
 15 Further, during the period of time between when the customer's support license lapsed and when
 16 Oracle decommissioned the customer's password credentials, SAP TN *still* accessed and
 17 downloaded Software and Support Materials using the old customer passwords. SAP TN did so
 18 despite its knowledge that it had no legal right or legitimate purpose to access Oracle's system *at*
 19 *all* after the customer's support license lapsed.

20 108. SAP TN did not innocently download the Software and Support
 21 Materials – the purpose was to copy them from customer support websites and store them on
 22 SAP TN's servers for later use in marketing and providing support services to Oracle customers.
 23 The rate that SAP TN accessed many of these materials – at intervals of just seconds or less –
 24 shows that no one reviewed them in real time. Further, the scope of the downloaded Software
 25 and Support Materials – across *multiple* libraries in *multiple* lines of business – for customers
 26 that had no license to take, or need for, those products, suggests that SAP TN took the Software
 27 and Support Materials to stockpile a library to support its present and prospective customers.

28 109. SAP TN's internal documents confirm that, in at least one instance, its

1 downloading was so massive that it sent Oracle's Siebel-related customer support website into
 2 failover. Despite having "crashed the Oracle website," SAP TN's wholesale downloading of
 3 Oracle's customer support materials continued.

4 110. SAP TN conducted these high-tech raids as the agent and instrumentality
 5 of SAP AG and SAP America and as the cornerstone strategy of their highly-publicized "Safe
 6 Passage" program. Further, to the extent SAP TN had any legitimate basis to access Oracle's
 7 site as a contract consultant for a customer with current licensed support rights, SAP TN
 8 committed to abide by the same license obligations and usage terms and conditions described
 9 above applicable to licensed customers. Indeed, *anyone* accessing such Software and Support
 10 Materials on the Oracle support website must agree to Oracle's terms and conditions, which
 11 restrict access to support only for products that a company has licensed, and impose strict
 12 confidentiality requirements. SAP TN reviewed and agreed to the terms and conditions on
 13 Oracle's support website before proceeding, and therefore committed its theft knowingly and
 14 intentionally, and in conscious disregard of Oracle's copyrights and other protected intellectual
 15 property, contractual restrictions on the use of its intellectual property, and the integrity of its
 16 computer systems.

17 **3. Specific Examples Of SAP TN's Unlawful Customer
 18 Downloads**

19 111. SAP TN's improper access to, and taking from, Oracle's Customer
 20 Connection website is too pervasive, and covers too many individual violations, to
 21 comprehensively detail here. Oracle has uncovered unlicensed downloads linked to SAP TN on
 22 behalf of numerous customers, including without limitation, Abbott Laboratories, Abitibi-
 23 Consolidated, Inc., Bear, Stearns & Co., Berri Limited, Border Foods, Caterpillar Elphinstone,
 24 Distribution & Auto Service, Fuelserv Limited, Grupo Costamex, Helzberg Diamonds, Herbert
 25 Waldman, Honeywell International, Interbrew UK, Laird Plastics, Merck & Co., Metro Machine
 26 Corp., Mortice Kern Systems, Inc., National Manufacturing, NGC Management Limited, OCE
 27 Technologies, B.V., Ronis, S.A., Smithfield Foods, SPX Corporation, Stora Enso, Texas
 28 Association of School Boards, VSM Group AB, and Yazaki North America. By way of example

1 of the nature and extent of SAP's theft, Oracle sets forth below illustrative instances of SAP
 2 TN's illegal conduct regarding several of its customers.

3 112. **Honeywell.** Honeywell International ("Honeywell") is listed on SAP
 4 TN's website as a client. In the approximately three and a half year period before Honeywell
 5 switched to SAP TN, it averaged just over 20 downloads of Software and Support Materials per
 6 month. Then, after switching to SAP TN, a user employing Honeywell's log-in ID downloaded
 7 at least 7,000 Software and Support Materials in less than two weeks in January 2007. Most of
 8 these excessive downloads came during the course of *four days*, during which "Honeywell" was
 9 downloading almost *1800 solutions per day*. At least 2,000 of the Software and Support
 10 Materials taken in this period were solutions that Honeywell was not licensed to take at all. In
 11 one specific library containing solutions for Enterprise One software, "Honeywell" downloaded
 12 at least 450 distinct unlicensed solutions on January 16, 2007 and nearly 400 more the next day.
 13 These downloads spanned virtually every library in every line of business – far beyond the
 14 products to which Honeywell had authorized access as an Oracle customer. This unlawful
 15 downloading even stretched across product families. Honeywell used and licensed PeopleSoft
 16 software applications, but Oracle discovered users downloading JDE products with Honeywell's
 17 credentials. Oracle subsequently connected many of the illegal downloads to an SAP TN IP
 18 address and to SAP TN's employee, Wade Walden – a former PeopleSoft employee now
 19 employed by SAP.

20 113. **Merck.** Merck & Company, Inc. ("Merck"), one of the largest
 21 pharmaceutical companies in the world, licenses and receives support for many Oracle software
 22 products. Merck's support rights for its JDE software products expired on January 1, 2007. In
 23 the three months prior to that date, users purporting to be "Merck" logged into the Oracle support
 24 system and downloaded at least 5,500 distinct Software and Support Materials for JDE software.
 25 At least 2,800 of these downloads related to JDE software products for which Merck had no
 26 license. But, the unauthorized downloads did not stop there. Users logging into Oracle's support
 27 system with Merck's credentials continued to download Software and Support Materials into
 28 March 2007. Many of these "Merck" downloads came directly from an IP address in Bryan,

1 Texas that belongs to SAP TN, and some were traced to a computer with SAP TN's initials in
 2 the title, "TN-DL03." In many cases, SAP TN users employed fake identification information to
 3 download the Software and Support Materials, using names such as "xx" "ss" and "NULL," and
 4 phone numbers such as "4444444444" and "999 999 9999." Neither Merck nor SAP TN had
 5 any license, authorization or other right to access and download the 2,800-plus unlicensed
 6 Software and Support Materials from Oracle.

7 **114. OCE.** OCE-Technologies B.V. ("OCE") is located in the Netherlands and
 8 appears as a customer on SAP TN's website. In the months leading up to the expiration of
 9 OCE's support rights for its Oracle products, users employing OCE's credentials downloaded a
 10 large number of Oracle products relating to US Payroll, Canadian Payroll, Homebuilder
 11 Management, and Real Estate Management – none of which make sense for a European
 12 customer supporting its European business. From December of 2006 to January of 2007, SAP
 13 TN users logged into Oracle's support system using OCE's credentials (and, in some cases, false
 14 user names) and downloaded at least 5,600 distinct Software and Support Materials. These
 15 downloads included at least 1,800 distinct items for which OCE had no license. There is little
 16 chance that SAP TN intended OCE as the beneficiary of these massive sweeps, since OCE does
 17 not run many of the software programs to which these downloads relate, and neither OCE nor
 18 SAP TN have any license, authorization, or other right to access and download these Software
 19 and Support Materials. Like the other companies, these illegal downloads are associated with the
 20 same IP address belonging to SAP TN in Bryan, Texas, including specifically to a computer with
 21 SAP TN's initials in the title, "TNL-02." Similar to the other customer examples, many of these
 22 "OCE" users entered phony identification information, such as the name "user" and phone
 23 numbers such as "123 456 7897," "9999999999," and even "xxx xxx xxxx." This systematic
 24 sweep of products across numerous licensed and unlicensed Oracle product lines and libraries
 25 dramatically exceeded the access for which OCE (and SAP TN acting on its behalf) had any
 26 right or authority, and could serve no legitimate or lawful business purpose.

27 **115. SPX.** SPX Corporation ("SPX") dropped all Oracle support on December
 28 10, 2006 and became an SAP TN customer, listed on SAP TN's website. For the nine month

1 period prior to October 2006, SPX averaged approximately eleven downloads per month from
 2 Oracle's support system. Then, between October and December 2006, users purporting to
 3 represent SPX accessed and downloaded at least 9,000 distinct Oracle Software and Support
 4 Materials (far more than SPX could legitimately access or use). These SPX downloads included
 5 at least 1,500 distinct Software and Support Materials for which SPX had no license. At least
 6 200 distinct downloads just on December 9, 2006 were Software and Support Materials related
 7 to unlicensed Payroll software. In some cases, these users logged in using SPX credentials, but
 8 used fake identification information like the name "NULL" and phone numbers like
 9 "7777777777" and "999 999 9999." Many of these SPX downloads, like the others, originated
 10 from the same IP address belonging to SAP TN, and some were traced to a computer with SAP
 11 TN's initials in the title, "tn-wts01."

12 **116. Metro Machine.** Metro Machine Corp. ("Metro Machine") dropped all
 13 Oracle support effective on January 1, 2007 and switched to SAP TN, as reflected on SAP TN's
 14 website. In the month before Metro Machine dropped its support rights with Oracle, users
 15 purporting to represent Metro Machine logged onto Oracle's support servers and downloaded at
 16 least 600 distinct Software and Support Materials. At least 50 of those downloads related to
 17 software programs that Metro Machine had not licensed from Oracle. In addition, users logging
 18 into Oracle's support system with Metro Machine's credentials continued to download Software
 19 and Support Materials into March 2007. Oracle has traced these illegal and unauthorized
 20 downloads to the same SAP TN IP address employed for the other downloads described above.

21 **117. Yazaki.** Yazaki North America, Inc. ("Yazaki") is a large supplier of
 22 automotive products headquartered in Michigan. It dropped all Oracle support effective on
 23 January 3, 2007. In the month leading up to the expiration of Yazaki's support rights for its
 24 Oracle products, users employing Yazaki's credentials downloaded an enormous number of
 25 Oracle Software and Support Materials relating to Canadian Payroll, Homebuilder Management,
 26 and Real Estate Management, and many other software products, which make no sense for a U.S.
 27 automotive supply company supporting its U.S. business. In two weeks, from December 15,
 28 2006 to December 29, 2006, SAP TN users logged into Oracle's support system using Yazaki's

1 credentials and downloaded at least 11,000 distinct Software and Support Materials. These
 2 downloads included at least 1,500 distinct items for which Yazaki had no license. There is little
 3 chance that SAP TN intended Yazaki as the beneficiary of these massive sweeps, since Yazaki
 4 does not run many of the software programs to which these downloads relate, and neither Yazaki
 5 nor SAP TN has any license, authorization, or other right to access and download these Software
 6 and Support Materials. Like the other companies, these illegal downloads are associated with the
 7 same IP address belonging to SAP TN in Bryan, Texas. Similar to the other cases, “Yazaki”
 8 users entered phony identification information, such as mixing the user ID “Joel_Joyce” with a
 9 different user name “Jeff Livermore” and an email address related to a different customer, SPX,
 10 “robbie@spxmks.com,” and a phony phone number “4444444444.” This systematic sweep of
 11 products across numerous licensed and unlicensed Oracle product lines and libraries
 12 substantially exceeded the access for which Yazaki (and SAP TN acting on its behalf) had any
 13 right or authority, and could serve no legitimate or lawful business purpose.

14 **F. SAP’s Theft By Illegally Copying And Using Oracle Software Applications**

15 118. The downloads are just a piece of a larger scheme. For years, dating at
 least to 2003, SAP TN created thousands of copies of Oracle’s actual software applications.
 16 These software copies included Oracle’s PeopleSoft-branded Human Resource Management,
 17 Customer Relationship Management, Enterprise Performance Management, Financial Data
 18 Management, Portal, and Student Administration product lines, and Oracle’s J.D. Edwards
 19 branded Distribution, Financials, Human Resources, and Manufacturing product lines. They also
 20 included Oracle’s Siebel software, and may also have included Oracle’s eBusiness Suite,
 21 Hyperion and Retek software.

23 119. SAP TN’s internal records reveal that it instructed Oracle customers, who
 24 were about to switch to SAP TN, how to order CDs containing “all software available and
 25 licensed” to them from Oracle, so customers could turn those software applications, in their
 26 entirety, over to SAP TN. SAP TN’s detailed instructions even encourage Oracle customers to
 27 lie to Oracle by, for example, telling Oracle that SAP TN’s offices are a “new ‘company’
 28 location” where Oracle software should be installed – despite plain language in Oracle’s license

1 agreements requiring a customer site to be physically located on property owned or leased by the
 2 customer. SAP TN used these CDs to create local environment copies of Oracle software on
 3 SAP TN computers for development, testing, training and research for other customers. Since
 4 Oracle provides customers the ability to load and license additional software from these CDs,
 5 SAP TN even undoubtedly copied software from these CDs to which the customer who sent
 6 them had no license.

7 120. Sometimes, SAP TN would not even bother to use the CDs it got from its
 8 customers. Instead, it would simply reuse the same environment over and over again for
 9 multiple customers, each time assigning the new copy a customer-specific identifier. According
 10 to SAP TN's corporate witness, it was "just a matter [of] efficiency to have a single source
 11 environment to use to create the specific client environments."

12 121. SAP TN acquired, created and maintained thousands of illegal copies of
 13 Oracle's software releases on its internal computer systems and generally treated the software as
 14 its own. SAP TN would "integrate" its stolen downloaded Software and Support Materials into
 15 new local software environments it would create, in order to "update" that environment to
 16 support the customer. Thus, the thousands of copies of Oracle software that SAP TN maintained
 17 on its systems, apart from the illicit existence and use of the software itself, each may be further
 18 tainted by the insertion into it of Software and Support Materials taken with a different
 19 customer's log-in credential.

20 122. As core parts of its daily business operations, SAP TN engaged in at least
 21 the following types of illegal activities with these copies of Oracle's enterprise applications
 22 software:

- 23 • SAP TN maintained entire copies of Oracle's enterprise software applications
 24 on SAP TN's computer systems without authorization or license. SAP TN
 25 internal documents indicate it had approximately 250 copies of various Oracle
 26 software releases in active use when Oracle filed suit. Another several
 27 thousand existed on SAP TN computers in backup form that SAP TN would
 28 restore and use for various illegal purposes;

- 1 • According to SAP TN’s sworn testimony, each of these several thousand
- 2 software copies may have illegally downloaded software patches or updates
- 3 contained within them;
- 4 • For each particular Oracle software release that it wanted to “support,” SAP
- 5 TN used unauthorized and unlicensed copies of Oracle software to create
- 6 “generic” or “sandbox” environments;
- 7 • In addition to the generic, all-purpose software copies, SAP TN also
- 8 maintained thousands of copies of Oracle’s software releases for the
- 9 ostensible purpose of supporting the customer who previously had licensed
- 10 that software. SAP TN has admitted under oath that it constructed some of
- 11 these software copies with software not licensed by that customer or provided
- 12 by that customer to SAP TN. It has also admitted it used even these
- 13 supposedly customer-specific software copies as reference and development
- 14 tools to support other customers;
- 15 • SAP TN used these “generic” and “customer specific” software copies to
- 16 support multiple customers, with no regard for which customer had originally
- 17 provided the copy of the Oracle software that SAP TN was using;
- 18 • SAP TN used these software copies for general development of its SAP-
- 19 branded fixes, for otherwise supporting other customers, and for general
- 20 testing, research, and training; and,
- 21 • SAP TN did not limit itself to possession of Oracle software provided by SAP
- 22 TN’s active customers. If an SAP customer left SAP’s service, SAP TN
- 23 considered itself entitled to keep the Oracle software copy provided by that
- 24 customer on SAP TN computers for “reference” – and did so many times.

25 123. Each instance of each such use constitutes an illegal, unauthorized use of
 26 Oracle’s software copy. This cross-use of the software copies was an essential part of the SAP
 27 TN business model, and fundamental to the success of the SAP Safe Passage program.

28 124. SAP TN additionally misused Oracle database software licensed under the

1 Developer License in violation of that Developer License by using it for internal data processing
 2 or commercial or production purposes. Oracle's database software was used in violation of that
 3 Developer License to support "about 40% of [SAP TN's] customer base."

4 125. Because SAP TN's assets essentially consist of, and SAP TN generated so
 5 many of its support deliverables by using, illegal copies and downloads of Oracle's software, it is
 6 unclear that SAP AG could effectively sell any of SAP TN's assets, as it publicly said it intended
 7 to do, in 2008, prior to the filing of Oracle's prior Complaint. SAP TN's business processes
 8 relied on repeated copyright infringement, and its assets consisted of thousands of co-mingled
 9 illegal downloads and software environments. Indeed, SAP AG's stated intent to sell SAP TN
 10 raised additional questions about whether SAP AG intended to perpetuate its own illegal conduct
 11 by selling for profit infringing copies of Oracle's software. After keeping SAP TN running for
 12 almost three years, including eighteen months after Oracle sued, all the while using known
 13 illegal software copies and creating knowingly illegal derivative support deliverables for its
 14 customers, SAP finally concluded that these very activities made a sale impossible. SAP shut
 15 down SAP TN in October 2008, admitting that SAP TN could not be operated in an ethical
 16 manner.

17 **G. Oracle's Software And Support Materials Are Registered With The**
 18 **Copyright Office**

19 126. The Software and Support Materials and software applications that SAP
 20 TN copied from its customers and downloaded from Oracle's systems included numerous works
 21 that are protected under the Federal Copyright Act, 17 U.S.C. §§ 101 *et seq.* These protected
 22 works are original works of authorship, owned by Oracle. Defendants' acts violated Oracle's
 23 exclusive rights to reproduce, create derivative works, publish, publicly display, offer for sale,
 24 and distribute these works. Defendants' acts were willful and intentional and constitute both
 25 direct and indirect copyright infringement under the Federal Copyright Act, 17 U.S.C. §§ 101 *et*
 26 *seq.*

27 127. **The Copyright Registrations.** With literally thousands of software
 28 programs available for licensing, Oracle does not typically obtain copyright registrations on all

1 programs or related Software and Support Materials as it generally does not find itself in the
 2 position of having to enforce its copyrights to stop infringement. However, upon discovering
 3 Defendants' mass downloading, Oracle registered copyrights on the Software and Support
 4 Materials taken and infringed by SAP TN.

5 128. The massive nature of the illicit downloads by SAP TN make it impossible
 6 to detail comprehensively each copyright violation in this Complaint. However, Oracle has now
 7 obtained from the Register of Copyrights over 40 certificates of registration that cover a wide
 8 range of Software and Support Materials taken by SAP TN and software applications copied and
 9 used by SAP TN. These include registrations of a number of Oracle knowledge management
 10 solutions, numerous versions of Oracle's JDE and Siebel software applications, service packs of
 11 JDE updates, and specific unlicensed Software and Support Materials taken by SAP TN.
 12 Collectively, these registrations cover thousands of unlicensed Software and Support materials,
 13 and software environments unlawfully copied by SAP TN.

14 129. Examples of SAP's infringement of registered copyrights include the
 15 following. On December 5, 2006, SAP TN used SPX's log-in ID to download a Payroll ESU,
 16 JJ13072, for EnterpriseOne software version 8.11 SP1. Oracle registered this ESU with the
 17 United States Copyright Office, *See* Registration No. TX 6-541-027. SAP TN used the log-in
 18 ID of another customer, Merck, to download an EnterpriseOne 8.12 Blend Management ESU,
 19 JK10093, on December 13, 2006. Oracle also registered this ESU with the Copyright Office.
 20 *See* Registration No. TX 6-541-045. Further, SAP TN logged in on December 18, 2006 using
 21 the log-in credentials of Yazaki and downloaded a Customer Relationship Management ESU,
 22 PH11676, for EnterpriseOne software version 8.11, which is now registered with the Copyright
 23 Office. *See* Registration No. TX 6-541-035. SAP TN also used the log-in ID of OCE to
 24 download a payroll update for World Software version A7.3, A738217431, on December 21,
 25 2006. Oracle registered this update with the Copyright Office as well. *See* Registration No. TX
 26 6-541-043. None of these customers was licensed to copy these works. Nor was SAP licensed
 27 to copy them in the names of those customers.

28 130. Oracle also owns preexisting copyright registrations that cover many of

1 the software programs copied by SAP TN to illegally create environments on its own systems.

2 **131. The DST Solution.** In at least one instance, SAP TN has also, publicly
 3 displayed, distributed, and thereby profited from Oracle's copyrighted Software and Support
 4 Materials. In December 2006, Oracle developed a knowledge solution related to the recent early
 5 change to Daylight Savings Time (the "DST Solution"). The DST Solution is a narrative
 6 document with specific instructions for how to conform certain Oracle software to the new
 7 Daylight Savings Time change. Oracle fielded more than a thousand service requests from its
 8 customers related to the Daylight Savings Time change, and its DST Solution helped resolve
 9 more than 750 of them.

10 **132.** Oracle traced downloads of the DST Solution to SAP TN's IP address on
 11 January 8, 2007 and January 15, 2007. Oracle also noticed that SAP TN posted a "PeopleSoft
 12 Daylight Savings Time solution" on its website. SAP TN's "solution" is substantially similar in
 13 total – and in large part appears to be copied identically from – Oracle's DST Solution. SAP
 14 TN's copied version even includes minor errors in the original DST Solution that Oracle later
 15 corrected. SAP TN's version also substitutes an SAP TN logo in place of the original Oracle
 16 logo and copyright notice. SAP's own internal investigation revealed that "it appears clear" that
 17 an SAP TN employee "copied a significant portion" of SAP TN's version of the DST solution
 18 from Oracle's solution.

19 **133.** Oracle has registered the downloaded version of its DST Solution that
 20 SAP TN copied and created derivative works from, and later distributed and publicly displayed,
 21 as well as a later version that SAP TN also downloaded shortly before Oracle filed its original
 22 Complaint, Registration Nos. TX 6-541-019 and TX 6-541-018. No customer is licensed to
 23 create derivative works from, distribute or publicly display Oracle's Software and Support
 24 Materials, and neither is SAP.

25 H. Project Blue And Safe Passage: SAP Adds Ill-Gotten Gains To Its Coffers

26 **134.** SAP TN claims to have delivered thousands of fixes and more than 1000
 27 tax and regulatory updates to Oracle's former customers. Not coincidentally, SAP TN has
 28 illegally downloaded thousands of fixes and updates from Oracle's restricted customer support

1 website and made and used thousands of copies of Oracle's software applications. SAP AG and
 2 SAP America directed this download and copying scheme, ratified it, never disavowed it, and
 3 financially benefited from it – all while pressuring SAP TN to win more customers through Safe
 4 Passage. As one SAP TN employee put it when reporting on the joint "Oracle Disruption Plan"
 5 – what SAP internally named the follow-up to its Safe Passage program – "SAP Germany is
 6 tracking these leads now and wants to see progress."

7 135. Senior management at SAP AG and SAP America knew the details of
 8 SAP TN's unlawful activities – and proceeded to hide them for more than two years until Oracle
 9 filed this lawsuit.

10 136. SAP AG and SAP America knew about and provided guidance concerning
 11 SAP TN's illegal downloading activities. As far back as 2005, SAP AG and SAP America
 12 lawyers specifically advised SAP TN to cease downloading Oracle support materials into co-
 13 mingled master "libraries." SAP AG and SAP America advised SAP TN to create customer-
 14 specific folders in which to house the downloads for new customers. But SAP AG and SAP
 15 America gave no instruction to break up or stop using the existing, co-mingled download
 16 libraries that SAP TN had populated with millions of PeopleSoft-branded Oracle downloads.
 17 And while SAP TN devoted several months to breaking apart the JDE master library into
 18 customer-specific folders (without curing its underlying illegality), it apparently received no
 19 parallel instruction to sort out the exponentially larger – and more lucrative – PeopleSoft
 20 "master" download library.

21 137. SAP AG and SAP America also knew about the central role illegal copies
 22 of Oracle software releases played in SAP TN's business.

23 138. By June 2005, concerned about the risks inherent in their possession and
 24 use of Oracle's software applications, the tight familial group leading SAP TN – founder
 25 Andrew Nelson, his wife Shelley Nelson (who was at the time the Vice President of PeopleSoft
 26 Support), and his brother Greg Nelson (who was at the time the Chief Information Officer) – had
 27 circulated a highly confidential draft "Blue" presentation with instructions in the subject line to
 28 "PLEASE DELETE AFTER READING." In it, Greg Nelson presented a

1 “Feasibility/Cost/Benefit” analysis of “going blue,” (discontinuing SAP TN’s illegal business
 2 model) and concluded that moving SAP TN’s model to all remote support would “decrease
 3 efficiency” and increase the human capital cost – and reduce the profitability – of SAP TN’s
 4 business. Most importantly, “If we are all blue [no local software copies available to use] . . .
 5 since all Development and testing will be done remotely, ***no sharing or recycling of work.***
 6 Require more developer hands in lieu of massive automation.” (emphasis supplied).

7 139. In other words, it would cost SAP TN more to service its customers
 8 legally – a prospect SAP TN could not accept. As Greg Nelson cautioned: “When we need a
 9 seed environment [a generic, all-purpose software copy for development, research, and training],
 10 we need to entice a customer to be Yellow [have possession of the Oracle software on SAP’s
 11 computers].” The group opposed the move and engaged in admitted “delay tactics” to preserve
 12 the efficiencies inherent in the illegal business model.

13 140. By June 30, 2005, SAP TN had worked up a revised presentation for
 14 members of the SAP AG board of directors that stated emphatically: “Yellow is what we do
 15 now - In House Hosting.” The presentation identified a laundry list of activities that SAP TN
 16 performed with its illegal local software copies that it would have to transfer in a remote hosting
 17 model, including: marketing, equipment, downloading, primary development, testing, and
 18 backup/restore. The presentation raised a series of obstacles to implementing “Project Blue,”
 19 including “got to find a way to download from client site.” It also again focused on the problem
 20 of how SAP TN could generate its copycat updates for its customers running certain versions of
 21 Oracle’s PeopleSoft-branded Human Resources payroll without keeping generic Oracle
 22 environments on its systems.

23 141. While SAP AG, SAP America and SAP TN debated Project Blue, they
 24 each took careful steps to avoid detection. In August 2006, SAP TN prepared for a visit by
 25 industry analyst Gartner. A confidential internal SAP TN memo warned “[r]emind Shelley
 26 [Nelson, SAP TN’s Vice-President of Support Services] to ***be careful and not talk about client***
 27 ***environment and legality . . .***” (emphasis supplied). A few months later, in connection with
 28 creating a document intended to explain to SAP TN customers how SAP TN actually provided

1 its service, SAP TN's Vice-President of JDE Support Services, Laura Sweetman (a former JDE
 2 employee experienced with the JDE software), noted that SAP TN's policy of creating "a fix-
 3 master demo environment in [SAP TN's] datacenter for every customer" had "IP issues." SAP
 4 TN then abandoned the "Guide to TomorrowNow Support Services" project.

5 142. In the meantime, the SAP AG board of directors apparently had no interest
 6 in forcing the migration from SAP TN's admittedly illegal local software environment model to
 7 a legal hosted one – not when SAP TN was such a crucial part of its plan to lure customers away
 8 from Oracle.

- 9 • National Foods Limited, May 2006 – "During an intense negotiation period,
 10 TomorrowNow was able to give 'substantial teeth' to the SAP license bid,
 11 with the offer of combining both JDE and PeopleSoft support and
 12 maintenance services for the foreseeable future, whilst they work on the SAP
 13 implementation plans."
- 14 • Mutual of Omaha, August 2006 – "[T]his quarter we are running a special
 15 sales program, jointly sponsored between TN and SAP, and we were able to
 16 offer some significant pricing incentives through the SAP/TN 'Turn Up The
 17 Heat' Campaign. . . Specifically, Mutual of Omaha will consider bringing in
 18 [SAP] for a Value Engineering study -- a critical step in the SAP sales
 19 methodology, and gives them appropriate executive level access. This is a
 20 significant commitment from the customer, and a great example of
 21 TomorrowNow creating future software sales pipeline for SAP."
- 22 • The Home Depot, October 2006 – SAP "was highly interested in winning
 23 away The Home Depot from Oracle." SAP TN CEO, Andrew Nelson, told
 24 SAP America CEO, Bill McDermott, that SAP TN would knock its fees down
 25 from "\$600k per year down to \$30k if you tell me you need this" and if
 26 McDermott could address Home Depot's concerns about the legality of SAP
 27 TN's services. The price was worth it – the deal would give SAP a
 28 "marketing deliverable" to use with other customers.

1 • Direct Energy, October 2006 – “Randy Wheeler, SAP [Account Executive],
 2 contacted [SAP TN] mid-August with a prospect running PeopleSoft. . . . Now
 3 that we have displaced Oracle, we have effectively created future sales
 4 pipeline for SAP.”

5 143. Similarly, when SAP announced in 2006 that it would provide support
 6 services for Oracle’s Siebel product line, SAP had an opportunity to develop and provide those
 7 support services in a legal manner from the start. Instead, the SAP AG board of directors
 8 expedited the SAP TN support offering for Siebel. In doing so, not one board member asked
 9 whether SAP TN continued to use local software environments to support PSFT and JDE
 10 customers. Not one board member bothered to specify that SAP TN should not make local
 11 copies of Siebel software. In short, despite what it may say now, SAP AG’s board of directors
 12 knew that SAP TN’s business model relied on illegal conduct, they condoned and facilitated the
 13 expansion of that conduct across the globe, and they further perpetuated that corrupt model into
 14 new product lines due to their own desperation at Oracle’s growing competitive presence.

15 144. SAP America and SAP AG also knew about SAP TN’s widespread misuse
 16 of Oracle’s database software. SAP TN requested that SAP either authorize a purchase of Oracle
 17 commercial-use database licenses and maintenance or that SAP TN be allowed to use SAP’s
 18 existing database license with Oracle for the same purposes. As late as 2007, and possibly until
 19 it was wound down eighteen months after Oracle filed this lawsuit, SAP TN still had not
 20 obtained an Oracle database license.

21 145. As these examples illustrate, SAP used Oracle’s stolen intellectual
 22 property to provide maintenance services and unfairly compete against Oracle, thereby illegally
 23 winning business and a number of customers from Oracle, and artificially inflating its market
 24 share.

25 **I. Defendants Conspired With And Aided And Abetted Each Other**

26 146. Defendants willfully, intentionally, and knowingly agreed and conspired
 27 with each other to engage in the alleged wrongful conduct, including Defendants’ copyright
 28 infringement, interference with Oracle’s business relationships and other unfair business

1 practices, as well as Defendants' trespass on, and computer fraud concerning the Software and
 2 Support Materials.

3 147. Defendants did the acts alleged pursuant to, and in furtherance of, that
 4 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting
 5 the acts of the others.

6 148. As a direct and proximate result of the acts in furtherance of the
 7 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss
 8 of profits from sales to current and potential customers of Oracle support services and licenses
 9 for Oracle's software programs. The wrongful conduct committed pursuant to the conspiracy
 10 was a substantial factor in causing this harm.

11 149. Defendants also had full knowledge of or should have reasonably known
 12 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such
 13 wrongful conduct, including copyright infringement, interference with Oracle's business
 14 relationships and other unfair business practices, as well as Defendants' trespass on, and
 15 computer fraud concerning the copyrighted Software and Support Materials, by providing
 16 substantial assistance and/or encouraging the others to act.

17 150. SAP AG and SAP America condoned and encouraged SAP TN's
 18 activities, including through the Safe Passage program and Project Blue. Indeed, despite Project
 19 Blue, SAP AG monitored the Safe Passage program closely, "tracking these leads" from
 20 Germany, and pushing SAP TN "to see progress." SAP AG and SAP America account
 21 executives repeatedly fed leads to SAP TN sales personnel and worked closely with them
 22 throughout the sales and negotiations process, presenting joint service offerings to prospective
 23 customers with the goal of creating applications revenue for SAP. A year after the acquisition of
 24 SAP TN, to facilitate the joint sales and marketing process further, SAP AG specifically
 25 encouraged – and required – closer cooperation between the sales and marketing teams at SAP
 26 AG, SAP America and SAP TN. Thus, SAP AG and SAP America knew about, permitted,
 27 encouraged, directed and profited from SAP TN's wrongful use of these materials.

28 151. Defendants also aided and abetted the described wrongful conduct of the

1 other Defendants by giving substantial assistance and/or encouragement that, separately
2 considered, was wrongful in and of itself.

3 152. As a direct and proximate result of the aiding and abetting of these acts,
4 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits
5 from sales to current and potential customers of Oracle support services and licenses to Oracle
6 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial
7 factor in causing this harm.

8 153. Defendants' intentional agreement to commit, and commission of, these
9 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,
10 and in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of
11 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

First Claim for Relief

Copyright Infringement

(By OIC Against All Defendants)

15 154. OIC incorporates by reference each of the allegations in the preceding
16 paragraphs of this Complaint as though fully set forth here.

17 155. OIC owns a valid and enforceable copyright in all of its software
18 applications and Software and Support Materials, which are creative works of original
19 authorship. OIC has pre-existing, or has obtained from the Register of Copyrights, Certificates
20 of Registration that cover many of the software applications and Software and Support Materials
21 taken and copied by SAP TN.

156. OIC has also obtained, through transfer agreements, all rights, title, and
interest in registered and unregistered copyrights formerly owned by certain PeopleSoft, J.D.
Edwards, and Siebel entities.

25 157. OIC owned one or more exclusive rights in certain copyrights at issue in
26 this case at a point in time during which Defendants infringed those exclusive rights.

27 158. Defendants have infringed copyrights in Oracle software applications and
28 Software and Support Materials, including the software applications and Software and Support

1 Materials covered by these certificates. These certificates are identified, dated and numbered as
 2 follows:

	Title of Work	Date of Registration	Registration Number
3	Shop Floor Control program	March 7, 1995	TXu 619-303
4	EDI Interface (6) program	March 7, 1995	TXu 619-304
5	Configuration Management program	March 7, 1995	TXu 619-305
6	Master Production Scheduling program	March 7, 1995	TXu 619-306
7	Capacity Requirements Planning program	March 7, 1995	TXu 619-307
8	WorldCASE Development Environment program	March 7, 1995	TXu 619-308
9	Equipment Management (5) program	March 7, 1995	TXu 619-309
10	General Ledger & Basic Financial program	March 7, 1995	TXu 619-310
11	Enterprise Facility Planning program	March 7, 1995	TXu 619-311
12	Accounts Receivable program	March 7, 1995	TXu 619-312
13	Warehouse Management program	March 7, 1995	TXu 619-313
14	Inventory Management program	March 7, 1995	TXu 619-314
15	Sales Order Processing/Sales Analysis program	March 7, 1995	TXu 619-315
16	Purchase Order Processing program	March 7, 1995	TXu 619-316
17	Product Data Management program	March 7, 1995	TXu 619-317
18	Financial Reporting (FASTR) program	March 7, 1995	TXu 619-318
19	WorldCASE Foundation Environment (3) program	March 7, 1995	TXu 619-319
20	Accounts Payable program	March 7, 1995	TXu 619-320
21	Financial Modeling, Budgeting & Allocations program	March 7, 1995	TXu 619-321
22	PeopleSoft HRMS 7.0	December 15 1998	TX 4-792-577
23	PeopleSoft HRMS 7.5	December 15, 1998	TX 4-792-575
24	PeopleSoft HRMS 8.0	November 20, 2000	TX 5-291-440
25	PeopleSoft 8 HRMS SP1	March 26, 2001	TX 5-501-312
26	PeopleSoft 8.3 HRMS	February 1, 2002	TX 5-469-032
27	PeopleSoft 8.8 HRMS	June 11, 2004	TX 6-093-947
28	PeopleSoft 8 Customer Relationship Management	September 27, 2001	TX-5-456-777
	PeopleSoft 8.8 Customer Relationship Management	June 11, 2004	TX 6-015-317
	PeopleSoft Financials, Distribution & Manufacturing 7.5	December 15, 1998	TX 4-792-574
	PeopleSoft 8 Financials and Supply Chain Management: Service Pack 2	September 27, 2001	TX-5-456-780
	PeopleSoft 8.4 Financials and Supply Chain Management	August 5, 2002	TX-5-586-247
	PeopleSoft 8.8 Enterprise Performance Management	June 11, 2004	TX-5-993-616
	PeopleSoft 8 Student Administration Solutions	November 30, 2001	TX 5-431-289
	PeopleTools 7.5	November 20, 1998	TX 4-792-578
	PeopleTools 8.0	September 5, 2000	TX 5-266-222
	PeopleTools 8.10	September 5, 2000	TX 5-266-221
	PeopleTools 8.4	August 5, 2002	TX 5-586-248
	Initial release of JD Edwards EnterpriseOne XE	April 26, 2007	TX 6-541-033
	ESU for JD Edwards EnterpriseOne Xe	May 3, 2007	TX 6-541-051
	Cumulative Update 8 for JD Edwards	April 26, 2007	TX 6-541-048

1	EnterpriseOne Xe		
2	Initial release of JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-050
3	ESU for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-046
4	Cumulative Update 1 for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-034
5	Initial release of JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-049
6	ESU for JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-036
7	Initial release of JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-038
8	ESU for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-037
9	Cumulative Update 2 for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-032
10	Initial release of JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-028
11	ESU for JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-035
12	Initial release of JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-040
13	ESU for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-027
14	Cumulative Update 1 for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-039
15	Initial release of JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-041
16	ESU for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-045
17	Cumulative Update 1 for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-042
18	Initial release of JD Edwards World A7.3	April 26, 2007	TX 6-541-029
19	Code Change for JD Edwards World A7.3	April 26, 2007	TX 6-541-043
20	Cumulative Update 16 for JD Edwards World A7.3	April 26, 2007	TX 6-541-031
21	Initial release of JD Edwards World A8.1	April 26, 2007	TX 6-541-047
22	Code Change for JD Edwards World A8.1	April 26, 2007	TX 6-541-044
23	Cumulative Update 6 for JD Edwards World A8.1	May 1, 2007	TX 6-545-421
24	Initial release of JD Edwards World A9.1	April 26, 2007	TX 6-541-030
25	ECRM89: Common Errors on Mobile Sales	April 26, 2007	TX 6-541-020
26	EAP WTHD06: 1099 IRS changes for the year 2006	April 26, 2007	TX 6-541-023
27	JD Edwards World -- 1099 Changes for Tax Year 2006	April 26, 2007	TX 6-541-026
28	E1: 1099: Year 2006 1099 ESUs	April 26, 2007	TX 6-541-024
29	Changes to Daylight Savings Time for 2007 (DST)	April 26, 2007	TX 6-541-025
30	E1: 07/77: Quantum for Payroll Tax v.280	April 26, 2007	TX 6-541-022
31	GM--Grants issues resolved by FMS ESA 8.9 Bundle #10-653723 (Oct 06)	April 26, 2007	TX 6-541-021
32	PeopleTools Third Party Daylight Saving Time Required Modifications	April 26, 2007	TX 6-541-019
33	PeopleTools Third Party Daylight Saving Time Required Modifications (Revised)	April 26, 2007	TX 6-541-018
34	PeopleSoft 8.01 & 8.31 Payroll Tax Update 05-F Year-End Processing: Canada	May 2, 2008	TX 6-838-549

1	PeopleSoft Payroll 1200457000 - User Documentation	May 2, 2008	TX 6-838-537
2	PeopleSoft Application Update Installation Instructions (UPD595817)	May 2, 2008	TX 6-838-544
3	PeopleSoft Financials and Supply Chain Management (FIN/SCM) 8.0	November 20, 2000	TX 5-291-439
4			
5	PeopleSoft 8 EPM SP3	March 30, 2001	TX 5-345-698
6	PeopleSoft 8.3 Enterprise Performance Management	March 11, 2002	TX 5-485-839
7	PeopleSoft 8.1 Customer Relationship Management	March 20, 2002	TX 5-493-450
8			
9	PeopleSoft 8 FIN/SCM SP1	March 26, 2001	TX 5-501-313
10	PeopleSoft 7.0 financials, distribution & manufacturing 7.0	December 15, 1998	TX 4-792-576
11			
12	PeopleSoft Benefits Administration 7.50	June 14, 1999	TX 5-072-090
13			
14	PeopleSoft Benefits Administration 7.0	June 15, 1999	TX 4-258-824
15			
16	PeopleSoft Payroll Interface 7.50	June 21, 1999	TX 3-772-292
17			
18	PeopleSoft Pension Administration 7	June 21, 1999	TX 3-772-290
19			
20	PeopleSoft Pension Administration 7.50	June 21, 1999	TX 3-772-291
21			
22	PeopleSoft Payroll 7	June 22, 1999	TX 4-501-140
23			
24	PeopleSoft Payroll Interface 7	June 22, 1999	TX 4-501-138
25			
26	PeopleSoft Human Resources 7	June 28, 1999	TX 4-994-865
27			
28	PeopleSoft Human Resources 7.50	June 28, 1999	TX 5-013-123
29			
30	PeopleSoft Payroll 7.50	June 28, 1999	TX 5-013-125
31			
32	PeopleSoft Payroll Interface 7 Higher Education	June 28, 1999	TX 5-013-124
33			
34	PeopleSoft Time and Labor 7	June 28, 1999	TX 5-013-128
35			
36	PeopleSoft Time and Labor 7.0	June 28, 1999	TX 4-994-866
37			
38	PeopleSoft Time and Labor 7.50	June 28, 1999	TX 4-994-867
39			
40	Database of Documentary Customer Support Materials for PeopleSoft Software	July 1, 2009	TXu1-607-454
41			
42	Database of Documentary Customer Support Materials for J.D. Edwards Software	July 1, 2009	TXu1-607-455
43			
44	Siebel 6.3 Initial Release and Documentation	June 29, 2009	TX 6-941-989
45			
46	Siebel 7.0.5 Initial Release and Documentation	June 29, 2009	TX 6-941-988

1	Siebel 7.5.2 Initial Release and Documentation	June 29, 2009	TX 6-941-990
2	Siebel 7.7.1 Initial Release and Documentation	June 29, 2009	TX 6-941-993
3	Siebel 7.8 Initial Release and Documentation	June 29, 2009	TX 6-941-995
4	Siebel 8.0 Initial Release and Documentation	June 29, 2009	TX 6-942-000
5	Siebel 8.1.1 Initial Release and Documentation	June 29, 2009	TX 6-942-001
6	Database of Documentary Customer Support Materials for Siebel Software	July 1, 2009	TXu1-607-453
7	Oracle 8i Enterprise Edition, release 2 (8.1.6)	February 2, 2001	TX 5-222-106
8	Oracle Relational Database Management System (RDBMS): Release 8.0.4	November 21, 2001	TX 5-392-842
9	Oracle Relational Database Management System (RDBMS), Release 8.0.5	November 21, 2001	TX 5-392-861
10	Oracle9i Database Enterprise : Edition Release 1	June 13, 2003	TX 5-673-281
11	Oracle9i Database Enterprise : Edition Release 2	June 13, 2003	TX 5-673-282
12	Oracle Database 10g: Release 1	January 16, 2009	TX 6-938-648
13	Oracle Database 10g: Release 2	June 29, 2009	TX 6-942-003

13 159. These registrations generally cover, but are not limited to, numerous
 14 versions of Oracle software, including the updates, patches and fixes incorporated in each
 15 relevant version, service packs of Oracle updates, patches and fixes, and individual exemplar
 16 Software and Support Materials, including certain Oracle knowledge management solutions and
 17 certain Oracle updates, patches and fixes, all of which SAP TN copied without a license. The
 18 registrations listed above also cover numerous Oracle software releases that SAP TN copied to
 19 create “local customer environments.”

20 160. OIC also has the following registrations that cover “Current Development
 21 Environments” for certain software releases:

22	Title of Work	Date of Registration	Registration Number
23	Current development environment for JD Edwards EnterpriseOne Xe	April 26, 2007	TXu1-345-109
24	Current development environment for JD Edwards EnterpriseOne 8.0	April 26, 2007	TXu1-345-111
25	Current development environment for JD Edwards EnterpriseOne 8.9	April 26, 2007	TXu1-345-112
26	Current development environment for JD Edwards EnterpriseOne 8.10	April 26, 2007	TXu1-345-113
27	Current development environment for JD Edwards EnterpriseOne 8.11	April 26, 2007	TXu1-345-114

1	Current development environment for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TXu1-345-115
2	Current development environment for JD Edwards EnterpriseOne 8.12	April 26, 2007	TXu1-346-350
3	Current development environment for JD Edwards World A7.3	April 26, 2007	TXu1-345-110
4	Current development environment for JD Edwards World A8.1	May 1, 2007	TX 6-545-422

6 Discrete portions of these registered Current Development Environments also contain updates,
 7 patches and fixes that SAP TN copied without a license. Defendants infringed these discrete
 8 portions of the registered Current Development Environments by taking without license the
 9 Software and Support Materials that are substantially similar to these discrete portions.

10 161. Through the acts alleged above, Defendants have violated the exclusive
 11 rights of OIC to reproduce and make copies of its copyrighted software applications and
 12 Software and Support Materials, including materials covered by the registrations listed above,
 13 by:

- 14 • repeatedly copying entire releases of Oracle's software, and related
 documentation, to SAP TN's own local systems, without authorization or
 license, to create "local customer environments";
- 15 • creating unlicensed works derived from these software copies and related
 documentation to support SAP TN's other customers;
- 16 • using these software copies for other improper business purposes,
 including, without limitation, training employees, troubleshooting,
 researching general and specific support issues, and marketing to
 prospective customers;
- 17 • "exploding" the source code of certain Software and Support Materials on
 to SAP TN's local machines in order to catalogue them to facilitate
 creation of unlicensed works in its own name;
- 18 • downloading Oracle's copyrighted Software and Support Materials onto
 its computers in violation of 17 U.S.C. § 106; and,

- 1 • repeatedly copying, co-mingling and cross-using the downloaded Software
 2 and Support materials to populate different customer folders, support other
 3 customers, and as a general resource to provide support in the ordinary
 4 course of SAP TN's business.

5 162. Defendants have also violated the exclusive rights of OIC to control the
 6 distribution, creation of derivative works and public display of copyrighted works by
 7 downloading, copying, creating derivative works from and/or distributing Oracle's Software and
 8 Support Materials and/or derivative works to Defendants' customers, via posting to its website,
 9 by electronic mail, through file transfer protocol, or otherwise, including at least Oracle's DST
 10 Solution, in violation of 17 U.S.C. § 106.

11 163. Defendants were not authorized to copy, download, reproduce, create
 12 derivative works from, distribute, or publicly display Oracle's copyrighted software applications
 13 and Software and Support Materials except as authorized by and in support of a specific licensed
 14 customer, using only (in the case of Software and Support Materials) that licensed customer's
 15 log in credentials, and with respect only to Software and Support Materials for which that
 16 customer had a current right to have and use.

17 164. In addition to directly infringing the exclusive rights of OIC, Defendants
 18 have contributorily and/or vicariously infringed the exclusive rights of OIC in Oracle software
 19 applications and Software and Support Materials by controlling, directing, intentionally
 20 encouraging, inducing or materially contributing to the copying, distribution, publicly display or
 21 creation of derivative works from Oracle's copyrighted software applications and Software and
 22 Support Materials. Defendants also obtained a direct financial benefit from the above alleged
 23 infringing activities while declining to exercise their right to stop it or limit it.

24 165. Defendants knew or should have known that copying, distributing, public
 25 display of, and creating derivative works of and from Oracle's software applications and
 26 Software and Support Materials, which Defendants copied in the name of customers who had no
 27 license to copy, distribute, publicly display or create derivative works from those materials,
 28 infringed the exclusive rights of OIC in those materials.

1 166. OIC is entitled to damages in an amount to be proven at trial, including
2 profits attributable to the infringement not taken into account in computing actual damages under
3 17 U.S.C. § 504(b). OIC is entitled to statutory damages under 17 U.S.C. § 504(c) based on
4 Defendants' infringements – after the dates of copyright registration – of certain copyrighted
5 works used to create SAP TN's "local customer environments" and the subsequent individual
6 further copying and use of each such environment.

7 167. Defendants' infringement of the exclusive rights of OIC has also caused
8 OIC irreparable injury. Unless restrained and enjoined, Defendants will continue to commit such
9 acts. OIC's remedies at law are not adequate to compensate them for these inflicted and
10 threatened injuries, entitling OIC to remedies including injunctive relief as provided by 17
11 U.S.C. § 502, and an order impounding or destroying any and all infringing materials pursuant to
12 17 U.S.C. § 503.

Second Claim for Relief

Violation of Federal Computer Fraud and Abuse Act

(18 U.S.C. §§ 1030(a)(2)(C), (a)(4) & (a)(5))

(By Oracle USA and OIC Against All Defendants)

17 168. Oracle USA and OIC incorporate by reference each of the allegations in
18 the preceding paragraphs of this Complaint as though fully set forth here.

19 169. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.
20 § 1030(a)(2)(C), by intentionally accessing a computer used for interstate commerce or
21 communication, without authorization or by exceeding authorized access to such a computer, and
22 by obtaining information from such a protected computer.

23 170. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. §
24 1030(a)(4), by knowingly, and with intent to defraud Oracle USA or OIC, accessing a protected
25 computer, without authorization or by exceeding authorized access to such a computer, and by
26 means of such conduct furthered the intended fraud and obtained one or more things of value,
27 including but not limited to Oracle's Software and Support Materials.

28 171. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.

1 § 1030(a)(5)(A)(i), by knowingly causing the transmission of a program, information, code, or
2 command and as a result intentionally causing damage without authorization to a protected
3 computer owned by Oracle USA.

4 172. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C.
5 §§ 1030(a)(5)(A)(ii) and (iii) by intentionally accessing a protected computer without
6 authorization, causing damage to Oracle USA or OIC, recklessly or without due regard for their
7 actions.

8 173. The computer system or systems that Defendants accessed as described
9 above constitute a “protected computer” within the meaning of 18 U.S.C. § 1030(e)(2).

10 174. Oracle USA and OIC have suffered damage and loss by reason of these
11 violations, including, without limitation, harm to Oracle USA's and OIC's data, programs, and
12 computer systems, and other losses and damage in an amount to be proved at trial, but, in any
13 event, in an amount well over \$5000 aggregated over a one-year period.

14 175. Defendants' unlawful access to and theft from Oracle USA's computers
15 have caused Oracle USA and OIC irreparable injury. Unless restrained and enjoined,
16 Defendants will continue to commit such acts. Oracle USA's, and OIC's remedies at law are not
17 adequate to compensate them for these inflicted and threatened injuries, entitling Oracle USA
18 and OIC to remedies including injunctive relief as provided by 18 U.S.C. § 1030(g).

Third Claim for Relief

Computer Data Access and Fraud Act - Cal. Penal Code § 502

(By Oracle USA and OIC Against All Defendants)

22 176. Oracle USA and OIC incorporate by reference the allegations of
23 paragraphs 1 through 125, 134 through 153, and 169 through 175 of this Complaint as though
24 fully set forth here.

25 177. Defendants have violated California Penal Code § 502(c)(2) by knowingly
26 and fraudulently, and without permission, accessing, taking, copying, and making use of
27 programs, data, and files from Oracle USA's computers, computer systems, and/or computer
28 networks.

1 178. Defendants have violated California Penal Code § 502(c)(3) by
2 knowingly, fraudulently, and without permission accessing and using Oracle USA's computer
3 services.

4 179. Defendants have violated California Penal Code § 502(c)(6) by
5 knowingly, fraudulently, and without permission providing, or assisting in providing, a means of
6 accessing Oracle USA's computers, computer systems, and/or computer networks.

7 180. Defendants have violated California Penal Code § 502(c)(7) by

8 knowingly, fraudulently, and without permission accessing, or causing to be accessed, Oracle
9 USA's computers, computer systems, and/or computer networks.

10 181. Oracle USA or OIC own certain data that comprises Software and Support
11 Materials obtained by Defendants as alleged above.

12 182. As a direct and proximate result of Defendants' unlawful conduct within
13 the meaning of California Penal Code § 502, Defendants have caused damage to Oracle USA
14 and OIC in an amount to be proven at trial. Oracle USA, and OIC are also entitled to recover
15 their reasonable attorneys' fees pursuant to California Penal Code § 502(e).

16 183. Oracle USA and OIC are informed and believe that the aforementioned
17 acts of the Defendants were willful and malicious in that Defendants' acts described above were
18 done with the deliberate intent to injure Oracle USA's and OIC's business and improve its own.
19 Oracle USA and OIC are therefore entitled to punitive damages.

184. Oracle USA and OIC have also suffered irreparable injury from these acts,
and due to the continuing threat of such injury, have no adequate remedy at law, entitling Oracle
USA and OIC to injunctive relief.

Fourth Claim for Relief

Breach of Contract

(By Oracle USA Against All Defendants)

26 185. Oracle USA incorporates by reference the allegations of paragraphs 1
27 through 125, 134 through 153, and 169 through 184 of this Complaint as though fully set forth
28 here.

1 186. Defendants agreed to be bound by the licenses and/or Terms of Use on
 2 Oracle's customer support websites, including the Terms of Use, the Special Terms of Use, the
 3 SAR legal restrictions, and/or the Legal Download Agreement when Defendants accessed or
 4 downloaded Software and Support Materials from Oracle's customer support websites.

5 187. Oracle USA has performed all conditions, covenants, and promises
 6 required on its part to be performed in accordance with the terms and conditions of Oracle's
 7 customer support websites' Terms of Use, the Special Terms of Use, the SAR legal restrictions,
 8 and the Legal Download Agreement.

9 188. Defendants have breached Oracle's customer support websites' Terms of
 10 Use, the Special Terms of Use, the SAR legal restrictions, and/or the Legal Download
 11 Agreement by, among other things:

- 12 • Accessing or using portions of the Software and Support Materials, not
 13 expressly licensed to and/or paid for by Defendants or the customers in
 14 whose name Defendants accessed Oracle's customer support websites and
 15 took the Software and Support Materials;
- 16 • Accessing the content available through Oracle's customer support
 17 websites, in the form of the Software and Support Materials, without being
 18 an authorized and designated Oracle technical support contact;
- 19 • Using the Software and Support Materials other than in support of a
 20 customer's authorized use of Oracle software for which a customer holds a
 21 supported license from Oracle;
- 22 • Using the Software and Support Materials without a legitimate business
 23 purpose;
- 24 • Using the Software and Support Materials in ways other than the
 25 furtherance of a relationship with Oracle; and,
- 26 • Accessing or using Software and Support Materials other than for
 27 personal, informational or non-commercial purposes.

28 189. As a result of Defendants' breach of Oracle's customer support websites'

1 Terms of Use, the Special Terms of Use, the SAR legal restrictions, and the Legal Download
 2 Agreement, Defendants have caused damage to Oracle USA in an amount to be proven at trial.

3 **Fifth Claim for Relief**

4 **Intentional Interference With Prospective Economic Advantage**

5 (By Oracle USA, OIC, and OEMEA Against All Defendants)

6 190. Oracle USA, OIC, and OEMEA incorporate by reference the allegations
 7 of paragraphs 1 through 125, 134 through 153, and 169 through 189 of this Complaint as though
 8 fully set forth here.

9 191. Oracle USA, OIC, and OEMEA have and had an expectancy in continuing
 10 and advantageous economic relationships with current and prospective purchasers and licensees
 11 of Oracle's support services and software, which are conducted through Oracle USA, OIC and,
 12 OEMEA.

13 192. These relationships contained the probability of future economic benefit in
 14 the form of profitable support service contracts and software licenses. Had Defendants refrained
 15 from engaging in the unlawful and wrongful conduct described in this complaint, there is a
 16 substantial probability that support customers of Oracle USA, OIC and OEMEA would have
 17 initiated, renewed, or expanded support contracts and software licenses with those Oracle
 18 entities, rather than with Defendants.

19 193. Defendants were aware of these economic relationships and intended to
 20 interfere with and disrupt them by wrongfully:

- 21 • gaining unauthorized access to Oracle USA's computer systems through
 22 Oracle's password-protected customer support websites in violation of the
 23 agreements governing such access;
- 24 • gaining unauthorized access to the Software and Support Materials
 25 available on Oracle USA's computer systems through Oracle's customer
 26 support websites, in violation of the agreements governing such access,
 27 including by using log in credentials of customers with no right or license
 28 to the Software and Support Materials taken by Defendants;

- 1 • breaching the agreements governing access to, and use of, the websites
2 and the Software and Support Materials available through it,
- 3 • luring Oracle USA's, OIC's and OEMEA's current and prospective
4 customers by making promotional and marketing statements regarding
5 Defendants' ability to provide support services for Oracle software that
6 were only possible because of Defendants' improper access to, and taking
7 from, Oracle USA's computer systems through Oracle's customer support
8 websites;
- 9 • using information learned through the improper access to, and taking
10 from, Oracle USA's computer systems through Oracle's customer support
11 websites to provide support services to Defendants' customers; and,
- 12 • gaining unauthorized access to Oracle's software releases through
13 deceptive representations to Oracle USA's, OIC's and OEMEA's
14 customers, causing customers to breach their license agreements with
15 Oracle, copying their software releases wholesale hundreds of times onto
16 Defendants' local systems, and using those copies for various improper
17 purposes, including without limitation to develop unauthorized SAP TN-
18 branded support products for distribution to their customers.

194. Defendants' conduct was wrongful by a measure beyond the fact of the
20 interference itself. Defendants gained unauthorized access to Oracle USA's computer systems
21 through Oracle USA's password-protected customer support websites, breached the agreements
22 governing access to, and use of, Oracle's customer support websites and the Software and
23 Support Materials available through Oracle's customer support websites, and wrongfully used
24 the property that they found there to advertise their services, and otherwise obtain and retain the
25 current and prospective clients of Oracle USA, OIC and OEMEA. Simultaneously, Defendants
26 manipulated those customers to obtain copies of Oracle software releases, which were then
27 copied to Defendants' own computer systems and used to lure away current and prospective
28 clients of Oracle USA, OIC and OEMEA.

1 195. This conduct, as alleged above, constitutes violations of numerous state
 2 and federal statutes and codes, including, but not limited to, violation of the Federal Computer
 3 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §
 4 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,
 5 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access
 6 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-
 7 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust
 8 enrichment.

9 196. As a result of Defendants' acts, the above-described relationships have
 10 been actually disrupted, causing certain current and prospective support clients to contract with
 11 Defendants instead of with Oracle USA, OIC and OEMEA for those clients' software support
 12 and maintenance and, in some cases, for their enterprise software.

13 197. As a direct and proximate result of Defendants' actions, Oracle USA, OIC
 14 and OEMEA have suffered economic harm, including, but not limited to, loss of profits from
 15 sales or licenses to current and potential customers of support services and enterprise software
 16 programs. Defendants' wrongful conduct was a substantial factor in causing this harm.

17 198. Unless Defendants are restrained by appropriate injunctive relief, their
 18 actions are likely to recur and will cause Oracle USA, OIC and OEMEA irreparable injury for
 19 which there is no adequate remedy at law.

20 199. Defendants' interference with Oracle USA's, OIC's and OEMEA's
 21 prospective economic advantage with its current and future customers, as described above, was
 22 willful, malicious, oppressive, and in conscious disregard of Oracle USA's, OIC's and
 23 OEMEA's rights, and Oracle USA, OIC and OEMEA are therefore entitled to an award of
 24 punitive damages to punish Defendants' wrongful conduct and deter future wrongful conduct.

25 **Sixth Claim for Relief**

26 **Negligent Interference With Prospective Economic Advantage**

27 (By Oracle USA, OIC and OEMEA Against All Defendants)

28 200. Oracle USA, OIC and OEMEA incorporate by reference the allegations of

1 paragraphs 1 through 125, 134 through 153, and 169 through 199 of this Complaint as though
 2 fully set forth here.

3 201. Oracle USA, OIC and OEMEA have and had an expectancy in continuing
 4 and advantageous economic relationships with current and prospective purchasers and licensees
 5 of Oracle's support services and software, which are conducted through Oracle USA, OIC and
 6 OEMEA.

7 202. These relationships contained the probability of future economic benefit in
 8 the form of profitable support service contracts and enterprise software licenses. Had
 9 Defendants refrained from engaging in the unlawful and wrongful conduct described in this
 10 complaint, there is a substantial probability that the support customers of Oracle USA, OIC and
 11 OEMEA would have initiated, renewed, or expanded support contracts and enterprise software
 12 licenses with Oracle USA, OIC and OEMEA, rather than with Defendants.

13 203. Defendants knew or should have known about the economic relationship,
 14 described above, and knew or should have known that these relationships would be interfered
 15 with and disrupted if Defendants failed to act with reasonable care in their access of Oracle's
 16 customer support websites and use of Oracle's Software and Support Materials. Defendants
 17 failed to act with reasonable care. Instead, they:

- 18 • gained unauthorized access to Oracle USA's computer systems through
 Oracle USA's password-protected customer support websites in violation
 of the agreements governing such access;
- 19 • gained unauthorized access to the Software and Support Materials
 available on Oracle USA's computer systems through Oracle's customer
 support websites, in violation of the agreements governing such access,
 including by using log in credentials of customers with no right or license
 to the Software and Support Materials taken by Defendants;
- 20 • breached the agreements governing access to, and use of, the websites
 and the Software and Support Materials available through it;

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- 1 • lured Oracle USA's, OIC's and OEMEA's current and prospective
2 customers by making promotional and marketing statements regarding
3 Defendants' ability to provide support services for Oracle software that
4 were only possible because of Defendants' improper access to, and taking
5 from, Oracle USA's computer systems through Oracle's customer support
6 websites;
- 7 • used information learned through the improper access to, and taking
8 from, Oracle USA's computer systems through Oracle's customer support
9 websites to provide support services to Defendants' customers; and,
- 10 • gaining unauthorized access to Oracle's software releases through
11 deceptive representations to Oracle USA's, OIC's and OEMEA's
12 customers, causing those customers to breach their license agreements
13 with Oracle, copying their software releases wholesale hundreds of times
14 onto Defendants' local systems, and using those copies for various
15 improper purposes, including without limitation to develop unauthorized
16 SAP TN-branded support products for distribution to their customers.

17 204. Defendants' conduct was wrongful by a measure beyond the fact of the
18 interference itself. Defendants gained unauthorized access to Oracle USA's computer systems
19 through Oracle USA's password-protected customer support websites, breached the agreements
20 governing access to, and use of, Oracle's customer support websites and the Software and
21 Support Materials available through it, and wrongfully used the property that they found there to
22 advertise their services, and otherwise obtain and retain Oracle USA's, OIC's and OEMEA's
23 current and prospective clients. Simultaneously, Defendants manipulated Oracle's customers to
24 obtain copies of Oracle software releases, which were then copied to Defendants' own computer
25 systems and used to lure away Oracle USA's, OIC's and OEMEA's current and prospective
26 clients.

27 205. This conduct, as alleged above, constitutes violations of numerous state
28 and federal statutes and codes, including, but not limited to, violation of the Federal Computer

1 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §
 2 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,
 3 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access
 4 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-
 5 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust
 6 enrichment.

7 206. As a result of Defendants' acts, the above-described relationships have
 8 been actually disrupted, causing certain current and prospective support clients to contract with
 9 Defendants instead of Oracle USA, OIC and OEMEA for their software support and
 10 maintenance and, in some cases, for their enterprise software.

11 207. As a direct and proximate result of Defendants' actions, Oracle USA, OIC,
 12 and OEMEA have suffered economic harm, including, but not limited to, loss of profits from
 13 sales or licenses to current and potential customers of support services and enterprise software
 14 programs. Defendants' wrongful conduct was a substantial factor in causing this harm.

15 208. Unless Defendants are restrained by appropriate injunctive relief, their
 16 actions are likely to recur and will cause Oracle USA, OIC and OEMEA irreparable injury for
 17 which there is no adequate remedy at law.

18 **Seventh Claim for Relief**

19 **Unfair Competition - Cal. Bus. & Prof. Code § 17200**

20 (By Oracle USA, OIC, OEMEA, and SSI Against All Defendants)

21 209. Oracle USA, OIC, OEMEA, and SSI incorporate by reference the
 22 allegations of paragraphs 1 through 125, 134 through 153, and 169 through 208 of this
 23 Complaint as though fully set forth here.

24 210. Defendants have engaged in unlawful business acts or practices by
 25 committing acts including computer fraud, trespass, breach of contract, interference with
 26 business relationships, and other illegal acts and practices as alleged above, all in an effort to
 27 gain unfair competitive advantage over Oracle USA, OIC, SSI, and OEMEA.

28 211. These unlawful business acts or practices were committed pursuant to

1 business activity related to providing business applications software and related support and
 2 maintenance for that software.

3 212. The acts and conduct of Defendants constitute fraudulent, unlawful, and
 4 unfair competition as defined by California Bus. & Prof. Code §§ 17200, *et seq.*

5 213. Defendants' conduct constitutes violations of numerous state and federal
 6 statutes and codes, including, but not limited to, violation of the Computer Fraud and Abuse Act,
 7 18 U.S.C. §§ 1030 *et seq.*, receipt of stolen property, Cal. Penal Code § 496, unauthorized access
 8 to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343, violation of RICO, 18 U.S.C.
 9 § 1962, fraud and related activity in connection with an access device, 18 U.S.C. § 1029, and
 10 violation of the Stored Communications Act, 18 U.S.C. §§ 2701-11. Defendants' conduct also
 11 constitutes trespass to chattels, intentional interference with prospective economic advantage,
 12 negligent interference with prospective economic advantage, and unjust enrichment.

13 214. Defendants have improperly and unlawfully taken commercial advantage
 14 of Oracle USA's, OIC's, OEMEA's, and SSI's investments in their confidential, proprietary, and
 15 copyrighted Software and Support Materials and underlying software applications. In light of
 16 Defendants' conduct, it would be inequitable to allow Defendants to retain the benefit of the
 17 funds obtained through the unauthorized and unlawful use of that property.

18 215. Defendants' unfair business practices have unjustly minimized Oracle
 19 USA's, OIC's, OEMEA's, and SSI's competitive advantages and have caused and are causing
 20 Oracle USA, OIC, OEMEA, and SSI to suffer damages.

21 216. As a result of such unfair competition, Oracle USA, OIC, OEMEA, and
 22 SSI have also suffered irreparable injury and, unless Defendants are enjoined from such unfair
 23 competition, will continue to suffer irreparable injury, whereby Oracle USA, OIC, OEMEA, and
 24 SSI have no adequate remedy at law.

25 217. Defendants should be compelled to disgorge and/or restore any and all
 26 revenues, earnings, profits, compensation, and benefits they may have obtained in violation of
 27 California Business & Professions Code § 17200 *et seq.*, including, but not limited to, returning
 28 any revenue earned from the unlawful and unfair use of Oracle USA's, OIC's, OEMEA's, and

1 SSI's stolen property, and should be enjoined from further unlawful, unfair, and deceptive
 2 business practices.

3 **Eighth Claim for Relief**

4 **Trespass To Chattels**

5 (By Oracle USA Against All Defendants)

6 218. Oracle USA incorporates by reference the allegations of paragraphs 1
 7 through 125, 134 through 153, and 169 through 217 of this Complaint as though fully set forth
 8 here.

9 219. At all times mentioned in this Complaint, Oracle USA had legal title or
 10 license to and actual possession of Oracle's customer support websites, its access-restricted
 11 internet-based support systems, and the copies of Software and Support Materials on those
 12 support systems, as described above.

13 220. Defendants intentionally interfered with Oracle USA's use or possession
 14 of both Oracle's customer support websites and Oracle's related internal databases and systems,
 15 and the copies of Software and Support Materials housed for licensed access through Oracle's
 16 customer support websites.

17 221. Defendants' trespass and interference proximately caused damage to
 18 Oracle, including, but not limited to, damage to the functionality of Oracle USA's computer
 19 systems and data, damage to Oracle USA's rights to dominion and control over its property, and
 20 damage to the confidential nature of the information on Oracle USA's websites. As a result,
 21 Defendants caused Oracle USA's property to greatly diminish in value and deprived Oracle USA
 22 of the intended uses of its computer systems.

23 222. Oracle USA is entitled to recover any and all damages it sustained as a
 24 result of such trespass, in an amount to be determined at trial.

25 223. Defendants' trespass interfered with, and damaged, the integrity and
 26 functionality of Oracle USA's computer systems and data. Defendants will continue to commit
 27 such acts and other competitors will be encouraged to sweep Oracle USA's websites, potentially
 28 to the point of denying effective access to customers and preventing Oracle USA from using its

1 systems and data for their intended purpose. Defendants' trespass therefore threatens to cause
2 irreparable harm to Oracle USA, for which Oracle USA's remedy at law is not adequate to
3 compensate it for the injuries inflicted and threatened.

4 **Ninth Claim for Relief**

5 **Unjust Enrichment/Restitution**

6 (By Oracle USA, OIC, OEMEA, and SSI Against All Defendants)

7 224. Oracle USA, OIC, OEMEA, and SSI incorporate by reference the
8 allegations of paragraphs 1 through 125, 134 through 153, and 169 through 223 of this
9 Complaint as though fully set forth here.

10 225. Defendants unjustly received benefits at the expense of Oracle USA, OIC,
11 OEMEA, and SSI through Defendants' wrongful conduct, including Defendants' breach of the
12 agreements governing access to and use of Oracle's customer support websites, interference with
13 Oracle USA's, OIC's, OEMEA's, and SSI's business relationships and other unfair business
14 practices, as well as Defendants' trespass on, and computer fraud concerning the Software and
15 Support Materials, which took substantial time and money for Oracle entities including Oracle
16 USA, OIC, OEMEA, and SSI to develop. Defendants continue to unjustly retain these benefits
17 at the expense of Oracle USA, OIC, SSI and OEMEA. It would be unjust for Defendants to
18 retain any value they obtained as a result of their wrongful conduct.

19 226. Oracle USA, OIC, SSI and OEMEA are entitled to the establishment of a
20 constructive trust consisting of the benefit conferred upon Defendants by the revenues derived
21 from their wrongful conduct at the expense of Oracle entities including Oracle USA, OIC, SSI
22 and OEMEA as alleged above, and all profits derived from that wrongful conduct. Oracle USA,
23 OIC, SSI and OEMEA are further entitled to full restitution of all amounts in which Defendants
24 have been unjustly enriched at Oracle USA's, OIC's, SSI's and OEMEA's expense.

25 **Tenth Claim for Relief**

26 **An Accounting**

27 (By Oracle USA, OIC, OEMEA, and SSI Against All Defendants)

28 227. Oracle USA, OIC, OEMEA, and SSI incorporate by reference the

- 1** allegations of paragraphs 1 through 125, 134 through 153, and 169 through 226 of this
2 Complaint as though fully set forth here.

3 228. Since at least September 2006, Defendants have obtained business through
4 the use of unlawful conduct including, but not limited to:

5 (a) Breaching the agreements governing access to or use of Oracle's
6 customer support websites;

7 (b) Intentionally and/or negligently interfering with Oracle USA's,

⁸ OIC's and OEMEA's prospective economic advantage with its existing and potential customers;

9 (c) Improperly, willfully, and unlawfully taking commercial advantage

10 of the investment in its Software and Support Materials by Oracle entities including Oracle U

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⁽¹⁾ See also the section titled "Statistical significance" on p. 1.

¹⁷ See 1 Cor 1:10; 2 Cor 1:1; 1 Thess 1:1; 1 Cor 11:1; 1 Cor 14:1; 1 Cor 15:1.

220 D. S. J. de Groot et al. / Journal of Safety Research 41 (2010) 201–221

18 C-1 USA SIG SEMEA 1981

688 The Journal of Superconductivity and Novel Magnetism, Vol. 24, No. 4, December 2011, pp. 683–688, © 2011 Springer Science+Business Media, LLC

20 GEMEA-1SS1 and GEMEA-2SS1 USA QIG GEMEA-1SS1 and GEMEA-2SS1

• • • • •

WHEREFORE, On the _____ of November, _____ of the year _____;

²⁶ See E. G. R. Taylor, *The Social History of England* (London, 1955), pp. 11–12.

27 Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert
28 or participation with any of them, from the following:

16 (5) Facilitating the access to, use of, or downloading from any
17 Oracle support website for, or on behalf of, any customer other than by using that specific
18 customer's valid login credentials;

24 (7) Regardless of the location of any specific Software and

26 ³ As used in this Prayer, “copying” includes downloading from a website or digital storage
27 media.

1 Support Materials or software environments, copying, distributing or using Software and Support
2 Materials or any software environments obtained through or for one customer to support a
3 different customer;

4 (8) Supporting, maintaining or facilitating the support or
5 maintenance of software for any customer using a copy of any Oracle, J.D. Edwards, PeopleSoft,
6 or Siebel software, including any generic or customer-specific software environments, except to
7 the extent that (i) that customer licensed the software from Oracle, (ii) the customer received the
8 software copy directly from Oracle, (iii) the software environment was created using that
9 customer's software, and, (iv) the software and software environment is maintained exclusively
10 at the customer's physical location;

11 (9) Facilitating the copying, distribution or use of, any Oracle
12 Software and Support Materials or any software environment without keeping a record, which
13 Oracle may inspect upon three (3) business days' written notice, that accurately reflects all
14 Software and Support Materials or software environments (a) copied, distributed or used,
15 organized by customer name, (b) the date(s) of the copying, distribution or use, and (c) all other
16 entities involved in the copying, distribution or use, including name of the entity, principal
17 contact, and contact information; and,

18 (10) Otherwise engaging in acts of unfair competition, copyright
19 infringement, trespass, computer fraud, and interference with Oracle's business relationships;

20 B. That the Court order Defendants to file with the Court and serve on
21 Oracle within thirty (30) days after the service on Defendants of such injunction a report in
22 writing, under oath, setting forth in detail the manner and form in which Defendants have
23 complied with the injunction;

24 C. For an Order directing Defendants to return Oracle's property,
25 including, without limitation, Oracle's confidential, proprietary, and copyrighted Software and
26 Support Materials, including data, internal documents, and valuable updates, patches, fixes, and
27 other computer code, that Defendants took from Oracle, as set forth in this Complaint;

28 D. For an order impounding or destroying any and all infringing

1 materials pursuant to 17 U.S.C. § 503;

2 E. For an Order awarding Oracle punitive damages in a sum to be
3 determined at trial, on the basis of Defendants' willful and deliberate unauthorized computer
4 access and fraud, intentional interference with Oracle's prospective economic advantage,
5 trespass, aiding and abetting and conspiracy;

6 F. For restitution and disgorgement of all ill-gotten gains unjustly
7 obtained and retained by Defendants through the acts complained of here;

8 G. For an Order finding a Constructive Trust for Oracle's benefit,
9 consisting of all revenues received by Defendants from their wrongful conduct which should
10 rightfully have been received by Oracle and all profits derived from that wrongful conduct, and
11 directing Defendants to pay all such sums to Oracle;

12 H. For damages to be proven at trial;

13 I. For statutory damages pursuant to 17 U.S.C. § 504;

14 J. For prejudgment interest;

15 K. For an accounting;

16 L. For an Order awarding Oracle its attorneys' fees and costs; and,

17 M. For an Order awarding Oracle such other and further relief as the
18 Court deems just and proper.

19 DATED: August 18, 2009

BINGHAM McCUTCHEN LLP

20
21 By: _____
22

Geoffrey M. Howard

23 Attorneys for Plaintiffs
24 Oracle USA, Inc., Oracle International
25 Corp., Oracle EMEA Ltd., and Siebel
26 Systems, Inc.

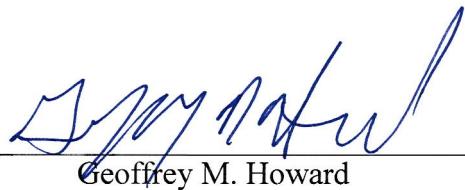
1 DEMAND FOR JURY TRIAL

2 In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle USA, Inc., Oracle
3 International Corp., Oracle EMEA Ltd., and Siebel Systems, Inc. demand a trial by jury on all
4 issues triable by a jury.

5 DATED: August 18, 2009

6 BINGHAM McCUTCHEN LLP

7 By:



Geoffrey M. Howard

10 Attorneys for Plaintiffs
11 Oracle USA, Inc., Oracle International
12 Corp., Oracle EMEA Ltd., and Siebel
13 Systems, Inc.

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